

CHAPTER 19

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SUBCHAPTER I

OFFICIAL OATHS AND BONDS

19.01 Oaths and bonds. (1) FORM OF OATH. Every official oath required by article IV, section 28, of the constitution or by any statute shall be in writing, subscribed and sworn to and except as provided otherwise by s. 757.02 and SCR 40.15, shall be in substantially the following form:

STATE OF WISCONSIN,

County of

I, the undersigned, who have been elected (or appointed) to the office of, but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

Subscribed and sworn to before me this day of, (year)

.... (Signature)....

(1m) FORM OF ORAL OATH. If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:

I,, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of to the best of my ability. So help me God.

(2) FORM OF BOND. (a) Every official bond required of any public officer shall be in substantially the following form:

We, the undersigned, jointly and severally, undertake and agree that, who has been elected (or appointed) to the office of, will faithfully discharge the duties of the office according to law, and will pay to the parties entitled to receive the same, such damages, not exceeding in the aggregate dollars, as may be suffered by them in consequence of the failure of to discharge the duties of the office.

Dated, (year)

....(Principal)....,

....(Surety)....,

(b) Any further or additional official bond lawfully required of any public officer shall be in the same form and it shall not affect or impair any official bond previously given by the officer for the same or any other official term. Where such bond is in excess of the sum of \$25,000, the officer may give 2 or more bonds.

(2m) EFFECT OF GIVING BOND. Any bond purportedly given as an official bond by a public officer, of whom an official bond is required, shall be deemed to be an official bond and shall be deemed as to both principal and surety to contain all the conditions and provisions required in sub. (2), regardless of its form or wording, and any provisions restricting liability to less than that provided in sub. (2) shall be void.

(3) OFFICIAL DUTIES DEFINED. The official duties referred to in subs. (1) and (2) include performance to the best of his or her ability by the officer taking the oath or giving the bond of every official act required, and the nonperformance of every act forbidden,

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by law to be performed by the officer; also, similar performance and nonperformance of every act required of or forbidden to the officer in any other office which he or she may lawfully hold or exercise by virtue of incumbency of the office named in the official oath or bond. The duties mentioned in any such oath or bond include the faithful performance by all persons appointed or employed by the officer either in his or her principal or subsidiary office, of their respective duties and trusts therein.

(4) WHERE FILED. (a) Official oaths and bonds of the following public officials shall be filed in the office of the secretary of state:

1. All members and officers of the legislature.
2. The governor.
3. The lieutenant governor.
4. The state superintendent.
5. The justices, reporter and clerk of the supreme court.
6. The judges of the court of appeals.
7. The judges and reporters of the circuit courts.
8. All notaries public.
9. Every officer, except the secretary of state, state treasurer, district attorney and attorney general, whose compensation is paid in whole or in part out of the state treasury, including every member or appointee of a board or commission whose compensation is so paid.
10. Every deputy or assistant of an officer who files with the secretary of state.

(b) Official oaths and bonds of the following public officials shall be filed in the office of the governor:

1. The secretary of state.
2. The state treasurer.
3. The attorney general.

(bn) Official oaths and bonds of all district attorneys shall be filed with the secretary of administration.

(c) Official oaths and bonds of the following public officials shall be filed in the office of the clerk of the circuit court for any county in which the official serves:

1. All circuit and supplemental court commissioners.
3. All municipal judges.
4. All judges or judicial officers, not included in subds. 1. and 3., elected or appointed for that county, or whose jurisdiction is limited to that county.

(d) Official oaths and bonds of all elected or appointed county officers, other than those enumerated in par. (c), and of all officers whose compensation is paid out of the county treasury shall be filed in the office of the county clerk of any county in which the officer serves.

(dm) Official oaths and bonds of members of the governing board, and the superintendent and other officers of any joint county school, county hospital, county sanatorium, county asylum or other joint county institution shall be filed in the office of the county clerk of the county in which the buildings of the institution that the official serves are located.

(e) Official oaths and bonds of all elected or appointed town officers shall be filed in the office of the town clerk for the town in which the officer serves, except that oaths and bonds of town clerks shall be filed in the office of the town treasurer.

(f) Official oaths and bonds of all elected or appointed city officers shall be filed in the office of the city clerk for the city in which the officer serves, except that oaths and bonds of city clerks shall be filed in the office of the city treasurer.

(g) Official oaths and bonds of all elected or appointed village officers shall be filed in the office of the village clerk for the village in which the officer serves, except that oaths and bonds of village clerks shall be filed in the office of the village treasurer.

(h) The official oath and bond of any officer of a school district or of an incorporated school board shall be filed with the clerk of

the school district or the clerk of the incorporated school board for or on which the official serves.

(j) Official oaths and bonds of the members of a technical college district shall be filed with the secretary for the technical college district for which the member serves.

(4m) APPROVAL AND NOTICE. Bonds specified in sub. (4) (c), (d) and (dm) and bonds of any county employee required by statute or county ordinance to be bonded shall be approved by the district attorney as to amount, form and execution before the bonds are accepted for filing. The clerk of the circuit court and the county clerk respectively shall notify in writing the county board or chairperson within 5 days after the entry upon the term of office of a judicial or county officer specified in sub. (4) (c), (d) and (dm) or after a county employee required to be bonded has begun employment. The notice shall state whether or not the required bond has been furnished and shall be published with the proceedings of the county board.

(5) TIME OF FILING. Every public officer required to file an official oath or an official bond shall file the same before entering upon the duties of the office; and when both are required, both shall be filed at the same time.

(6) CONTINUANCE OF OBLIGATION. Every such bond continues in force and is applicable to official conduct during the incumbency of the officer filing the same and until the officer's successor is duly qualified and installed.

(7) INTERPRETATION. This section shall not be construed as requiring any particular officer to furnish or file either an official oath or an official bond. It is applicable to such officers only as are elsewhere in these statutes or by the constitution or by special, private or local law required to furnish such an oath or bond. Provided, however, that whether otherwise required by law or not, an oath of office shall be filed by every member of any board or commission appointed by the governor, and by every administrative officer so appointed, also by every secretary and other chief executive officer appointed by such board or commission.

(8) PREMIUM ON BOND ALLOWED AS EXPENSE. The state and any county, town, village, city or school district may pay the cost of any official bond furnished by an officer or employee thereof pursuant to law or any rules or regulations requiring the same if said officer or employee shall furnish a bond with a licensed surety company as surety, said cost not to exceed the current rate of premium per year. The cost of any such bond to the state shall be charged to the proper expense appropriation.

History: 1971 c. 154; 1977 c. 29 s. 1649; 1977 c. 187 ss. 26, 135; 1977 c. 305 s. 64; 1977 c. 449; Sup. Ct. Order, eff. 1–1–80; 1979 c. 110 s. 60 (13); 1983 a. 6, 192; 1983 a. 538 s. 271; 1989 a. 31; 1991 a. 39, 316; 1993 a. 399; 1997 a. 250; 1999 a. 32, 83; 2001 a. 61; 2007 a. 96.

19.015 Actions by the state, municipality or district.

Whenever the state or any county, town, city, village, school district or technical college district is entitled to recover any damages, money, penalty or forfeiture on any official bond, the attorney general, county chairperson, town chairperson, mayor, village president, school board president or technical college district board chairperson, respectively, shall prosecute or cause to be prosecuted all necessary actions in the name of the state, or the municipality, against the officer giving the bond and the sureties for the recovery of the damages, money, penalty or forfeiture.

History: 1971 c. 154; 1983 a. 192; 1989 a. 56; 1993 a. 399.

19.02 Actions by individuals. Any person injured by the act, neglect or default of any officer, except the state officers, the officer's deputies or other persons which constitutes a breach of the condition of the official bond of the officer, may maintain an action in that person's name against the officer and the officer's sureties upon such bond for the recovery of any damages the person may have sustained by reason thereof, without leave and without any assignment of any such bond.

History: 1991 a. 316.

19.03 Security for costs; notice of action. (1) Every person commencing an action against any officer and sureties upon

an official bond, except the obligee named therein, shall give security for costs by an undertaking as prescribed in s. 814.28 (3), and a copy thereof shall be served upon the defendants at the time of the service of the summons. In all such actions if final judgment is rendered against the plaintiff the same may be entered against the plaintiff and the sureties to such undertaking for all the lawful costs and disbursements of the defendants in such action, by whatever court awarded.

(2) The plaintiff in any such action shall, within 10 days after the service of the summons therein, deliver a notice of the commencement of such action to the officer who has the legal custody of such official bond, who shall file the same in his or her office in connection with such bond.

History: Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218; 1991 a. 316.

19.04 Other actions on same bond. No action brought upon an official bond shall be barred or dismissed by reason merely that any former action shall have been prosecuted on such bond, but any payment of damages made or collected from the sureties or any of them on any judgment in an action previously begun by any party on such bond shall be applied as a total or partial discharge of the penal sum of such bond, and such defense or partial defense may be pleaded by answer or supplemental answer as may be proper. The verdict and judgment in every such action shall be for no more than the actual damages sustained or damages, penalty or forfeiture awarded, besides costs. The court may, when it shall be necessary for the protection of such sureties, stay execution on any judgment rendered in such actions until the final determination of any actions so previously commenced and until the final determination of any other action commenced before judgment entered in any such action.

19.05 Execution; lien of judgment. (1) Whenever a judgment is rendered against any officer and the officer's sureties on the officer's official bond in any court other than the circuit court of the county in which the officer's official bond is filed, no execution for the collection of the judgment shall issue from the other court unless the plaintiff, the plaintiff's agent or the plaintiff's attorney shall make and file with the court an affidavit showing each of the following:

(a) That no other judgment has been rendered in any court in an action upon the officer's bond against the sureties of the bond that remains in whole or in part unpaid.

(b) That no other action upon the officer's bond against the sureties was pending and undetermined in any other court at the time of the entry of the judgment.

(2) A transcript of a judgment described in sub. (1) may be entered in the judgment and lien docket in other counties, shall constitute a lien, and may be enforced, in all respects the same as if it were an ordinary judgment, for the recovery of money, except as provided otherwise in sub. (1).

History: 1991 a. 316; 1995 a. 224.

19.06 Sureties, how relieved. Whenever several judgments shall be recovered against the sureties on any official bond in actions which shall have been commenced before the date of the entry of the last of such judgments the aggregate of which, exclusive of costs, shall exceed the sum for which such sureties remain liable at the time of the commencement of such actions, they may discharge themselves from all further liability upon such judgments by paying into court the sum for which they are then liable, together with the costs recovered on such judgments; or the court may, upon motion supported by affidavit, order that no execution for more than a proportional share of such judgments shall be issued thereon against the property of such sureties or either of them and that upon payment or collection of such proportional share they shall be discharged from the judgment or judgments upon which such proportional share shall be paid or collected. When the money is paid into court by the sureties as above specified the same, exclusive of the costs so paid in, shall be distributed by an order of the court to the several plaintiffs in such judgments

in proportion to the amount of their respective judgments. But every judgment shall have precedence of payment over all judgments in other actions commenced after the date of the recovery of such judgment.

History: 1979 c. 110 s. 60 (11).

19.07 Bonds of public officers and employees.

(1) CIVIL SERVICE EMPLOYEES; BLANKET BONDS. (a) The surety bond of any civil service employee of a city, village, town or county may be canceled in the manner provided by sub. (3).

(b) Any number of officers, department heads or employees may be combined in a schedule or blanket bond, where such bond is to be filed in the same place, and in the event such bond is executed by a corporate surety company, payment of the premium therefor is to be made from the same fund or appropriation prescribed in s. 19.01.

(2) CONTINUATION OF OBLIGATION. Unless canceled pursuant to this section, every such bond shall continue in full force and effect.

(3) CANCELLATION OF BOND. (a) Any city, village, town or county by their respective governing body may cancel such bond or bonds of any one employee or any number of employees by giving written notice to the surety by registered mail, such cancellation to be effective 15 days after receipt of such notice.

(b) When a surety, either personal or corporate, on such bond, shall desire to be released from such bond, the surety may give notice in writing that the surety desires to be released by giving written notice by registered mail, to the clerk of the respective city, village, town or county, and such cancellation shall be permitted if approved by the governing body thereof, such cancellation to be effective 15 days after receipt of such notice. This section shall not be construed to operate as a release of the sureties for liabilities incurred previous to the expiration of the 15 days' notice.

(c) Whenever a surety bond is canceled in the manner provided by this section, a proportional refund shall be made of the premium paid thereon.

History: 1979 c. 110 s. 60 (11); 1991 a. 316; 1993 a. 246.

19.10 Oaths. Each of the officers enumerated in s. 8.25 (4) (a) or (5) shall take and subscribe the oath of office prescribed by article IV, section 28, of the constitution, as follows: The governor and lieutenant governor, before entering upon the duties of office; the secretary of state, treasurer, attorney general, state superintendent and each district attorney, within 20 days after receiving notice of election and before entering upon the duties of office.

History: 1983 a. 192; 1989 a. 31; 1991 a. 39.

19.11 Official bonds. (1) The secretary of state, treasurer and attorney general shall each furnish a bond to the state, at the time each takes and subscribes the oath of office required of that officer, conditioned for the faithful discharge of the duties of the office, and the officer's duties as a member of the board of commissioners of public lands, and in the investment of the funds arising therefrom. The bond of each of said officers shall be further conditioned for the faithful performance by all persons appointed or employed by the officer in his or her office of their duties and trusts therein, and for the delivery over to the officer's successor in office, or to any person authorized by law to receive the same, of all moneys, books, records, deeds, bonds, securities and other property and effects of whatsoever nature belonging to the officer's offices.

(2) Each of said bonds shall be subject to the approval of the governor and shall be guaranteed by resident freeholders of this state, or by a surety company as provided in s. 632.17 (2). The amount of each such bond, and the number of sureties thereon if guaranteed by resident freeholders, shall be as follows: secretary of state, \$25,000, with sufficient sureties; treasurer, \$100,000, with not less than 6 sureties; and the attorney general, \$10,000, with not less than 3 sureties.

(3) The attorney general shall renew the bond required under this section in a larger amount and with additional security, and the

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treasurer shall give an additional bond, when required by the governor.

(4) The governor shall require the treasurer to give additional bond, within such time, in such reasonable amount not exceeding the funds in the treasury, and with such security as the governor shall direct and approve, whenever the funds in the treasury exceed the amount of the treasurer's bond; or whenever the governor deems the treasurer's bond insufficient by reason of the insolvency, death or removal from the state of any of the sureties, or from any other cause.

History: 1975 c. 375 s. 44; 1991 a. 316.

19.12 Bond premiums payable from public funds. Any public officer required by law to give a suretyship obligation may pay the lawful premium for the execution of the obligation out of any moneys available for the payment of expenses of the office or department, unless payment is otherwise provided for or is prohibited by law.

History: 1977 c. 339.

SUBCHAPTER II

PUBLIC RECORDS AND PROPERTY

19.21 Custody and delivery of official property and records. (1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from the officer's predecessor or other persons and required by law to be filed, deposited, or kept in the officer's office, or which are in the lawful possession or control of the officer or the officer's deputies, or to the possession or control of which the officer or the officer's deputies may be lawfully entitled, as such officers.

(2) Upon the expiration of each such officer's term of office, or whenever the office becomes vacant, the officer, or on the officer's death the officer's legal representative, shall on demand deliver to the officer's successor all such property and things then in the officer's custody, and the officer's successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(3) Any person who violates this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than \$25 nor more than \$2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(4) (a) Any city council, village board or town board may provide by ordinance for the destruction of obsolete public records. Prior to the destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue. This paragraph does not apply to school records of a 1st class city school district.

(b) The period of time any town, city or village public record is kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in the ordinance may not be less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board

under s. 16.61 (3) (e) and except as provided under sub. (7). This paragraph does not apply to school records of a 1st class city school district.

(c) Any local governmental unit or agency may provide for the keeping and preservation of public records kept by that governmental unit through the use of microfilm or another reproductive device, optical imaging or electronic formatting. A local governmental unit or agency shall make such provision by ordinance or resolution. Any such action by a subunit of a local governmental unit or agency shall be in conformity with the action of the unit or agency of which it is a part. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards established in ss. 16.61 (7) and 16.612. This paragraph does not apply to public records kept by counties electing to be governed by ch. 228.

(cm) Paragraph (c) does not apply to court records kept by a clerk of circuit court and subject to SCR chapter 72.

(5) (a) Any county having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records, except for court records subject to SCR chapter 72.

(b) Any county having a population of less than 500,000 may provide by ordinance for the destruction of obsolete public records, subject to s. 59.52 (4) (b) and (c), except for court records governed by SCR chapter 72.

(c) The period of time any public record shall be kept before destruction shall be determined by ordinance except that in all counties the specific period of time expressed within s. 7.23 or 59.52 (4) (a) or any other law requiring a specific retention period shall apply. The period of time prescribed in the ordinance for the destruction of all records not governed by s. 7.23 or 59.52 (4) (a) or any other law prescribing a specific retention period may not be less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e).

(d) 1. Except as provided in subd. 2., prior to any destruction of records under this subsection, except those specified within s. 59.52 (4) (a), at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the historical society or in which the society has indicated that it has no interest for historical purposes. Records which have a confidential character while in the possession of the original custodian shall retain such confidential character after transfer to the historical society unless the director of the historical society, with the concurrence of the original custodian, determines that such records shall be made accessible to the public under such proper and reasonable rules as the historical society promulgates.

2. Subdivision 1. does not apply to patient health care records, as defined in s. 146.81 (4), that are in the custody or control of a local health department, as defined in s. 250.01 (4).

(e) The county board of any county may provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a records management service for the county and may appropriate funds to accomplish such purposes.

(f) District attorney records are state records and are subject to s. 978.07.

(6) A school district may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of such destruction shall be given to the historical society, which shall preserve any records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61

(3) (e) and except as provided under sub. (7). This section does not apply to pupil records under s. 118.125.

(7) Notwithstanding any minimum period of time for retention set under s. 16.61 (3) (e), any taped recording of a meeting, as defined in s. 19.82 (2), by any governmental body, as defined under s. 19.82 (1), of a city, village, town or school district may be destroyed no sooner than 90 days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.

(8) Any metropolitan sewerage commission created under ss. 200.21 to 200.65 may provide for the destruction of obsolete commission records. No record of the metropolitan sewerage district may be destroyed except by action of the commission specifically authorizing the destruction of that record. Prior to any destruction of records under this subsection, the commission shall give at least 60 days' prior notice of the proposed destruction to the state historical society, which may preserve records it determines to be of historical interest. Upon the application of the commission, the state historical society may waive this notice. Except as provided under sub. (7), the commission may only destroy a record under this subsection after 7 years elapse from the date of the record's creation, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e).

History: 1971 c. 215; 1975 c. 41 s. 52; 1977 c. 202; 1979 c. 35, 221; 1981 c. 191, 282, 335; 1981 c. 350 s. 13; 1981 c. 391; 1983 a. 532; 1985 a. 180 ss. 22, 30m; 1985 a. 225; 1985 a. 332 s. 251 (1); Sup. Ct. Order, 136 Wis. 2d xi (1987); 1987 a. 147 ss. 20, 25; 1989 a. 248; 1991 a. 39, 185, 316; 1993 a. 27, 60, 172; 1995 a. 27, 201; 1999 a. 150 s. 672.

Sub. (1) provides that a police chief, as an officer of a municipality, is the legal custodian of all records of that officer's department. *Town of LaGrange v. Auchinleck*, 216 Wis. 2d 84, 573 N.W.2d 232 (Ct. App. 1997), 96–3313.

This section relates to records retention and is not a part of the public records law. An agency's alleged failure to keep sought-after records may not be attacked under the public records law. *Gehl v. Connors*, 2007 WI App 238, 306 Wis. 2d 247, 742 N.W.2d 530, 06–2455.

Under sub. (1), district attorneys must indefinitely preserve papers of a documentary nature evidencing activities of prosecutor's office. 68 Atty. Gen. 17.

A county with a population under 500,000 may by ordinance under s. 19.21 (6), [now s. 19.21 (5)] provide for the destruction of obsolete case records maintained by the county social services agency under s. 48.59 (1). 70 Atty. Gen. 196.

A VTAE (technical college) district is a "school district" under s. 19.21 (7) [now s. 19.21 (6)]. 71 Atty. Gen. 9.

19.22 Proceedings to compel the delivery of official property. (1) If any public officer refuses or neglects to deliver to his or her successor any official property or things as required in s. 19.21, or if the property or things shall come to the hands of any other person who refuses or neglects, on demand, to deliver them to the successor in the office, the successor may make complaint to any circuit judge for the county where the person refusing or neglecting resides. If the judge is satisfied by the oath of the complainant and other testimony as may be offered that the property or things are withheld, the judge shall grant an order directing the person so refusing to show cause, within some short and reasonable time, why the person should not be compelled to deliver the property or things.

(2) At the time appointed, or at any other time to which the matter may be adjourned, upon due proof of service of the order issued under sub. (1), if the person complained against makes affidavit before the judge that the person has delivered to the person's successor all of the official property and things in the person's custody or possession pertaining to the office, within the person's knowledge, the person complained against shall be discharged and all further proceedings in the matter before the judge shall cease.

(3) If the person complained against does not make such affidavit the matter shall proceed as follows:

(a) The judge shall inquire further into the matters set forth in the complaint, and if it appears that any such property or things are withheld by the person complained against the judge shall by warrant commit the person complained against to the county jail, there to remain until the delivery of such property and things to the complainant or until the person complained against be otherwise discharged according to law.

(b) If required by the complainant the judge shall also issue a warrant, directed to the sheriff or any constable of the county, commanding the sheriff or constable in the daytime to search such places as shall be designated in such warrant for such official property and things as were in the custody of the officer whose term of office expired or whose office became vacant, or of which the officer was the legal custodian, and seize and bring them before the judge issuing such warrant.

(c) When any such property or things are brought before the judge by virtue of such warrant, the judge shall inquire whether the same pertain to such office, and if it thereupon appears that the property or things pertain thereto the judge shall order the delivery of the property or things to the complainant.

History: 1977 c. 449; 1991 a. 316; 1993 a. 213.

19.23 Transfer of records or materials to historical society. (1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records board, be transferred into the custody of the historical society, as provided in s. 16.61.

(2) The proper officer of any county, city, village, town, school district or other local governmental unit, may under s. 44.09 (1) offer title and transfer custody to the historical society of any records deemed by the society to be of permanent historical importance.

(3) The proper officer of any court may, on order of the judge of that court, transfer to the historical society title to such court records as have been photographed or microphotographed or which have been on file for at least 75 years, and which are deemed by the society to be of permanent historical value.

(4) Any other articles or materials which are of historic value and are not required for current use may, in the discretion of the department or agency where such articles or materials are located, be transferred into the custody of the historical society as trustee for the state, and shall thereupon become part of the permanent collections of said society.

History: 1975 c. 41 s. 52; 1981 c. 350 s. 13; 1985 a. 180 s. 30m; 1987 a. 147 s. 25; 1991 a. 226; 1995 a. 27.

19.24 Refusal to deliver money, etc., to successor. Any public officer whatever, in this state, who shall, at the expiration of the officer's term of office, refuse or willfully neglect to deliver, on demand, to the officer's successor in office, after such successor shall have been duly qualified and be entitled to said office according to law, all moneys, records, books, papers or other property belonging to the office and in the officer's hands or under the officer's control by virtue thereof, shall be imprisoned not more than 6 months or fined not more than \$100.

History: 1991 a. 316.

19.25 State officers may require searches, etc., without fees. The secretary of state, treasurer and attorney general, respectively, are authorized to require searches in the respective offices of each other and in the offices of the clerk of the supreme court, of the court of appeals, of the circuit courts, of the registers of deeds for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom without the payment of any fee or charge whatever.

History: 1977 c. 187, 449.

19.31 Declaration of policy. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, con-

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sistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

History: 1981 c. 335, 391.

An agency cannot promulgate an administrative rule that creates an exception to the open records law. *Chavala v. Bubolz*, 204 Wis. 2d 82, 552 N.W.2d 892 (Ct. App. 1996), 95–3120.

Although the requester referred to the federal freedom information act, a letter that clearly described open records and had all the earmarkings of an open records request was in fact an open records request and triggered, at minimum, a duty to respond. *ECO, Inc. v. City of Elkhorn*, 2002 WI App 302, 259 Wis. 2d 276, 655 N.W.2d 510, 02–0216.

The public records law addresses the duty to disclose records; it does not address the duty to retain records. An agency's alleged failure to keep sought-after records may not be attacked under the public records law. Section 19.21 relates to records retention and is not a part of the public records law. *Gehl v. Connors*, 2007 WI App 238, 306 Wis. 2d 247, 742 N.W.2d 530, 06–2455.

The Wisconsin public records law. 67 MLR 65 (1983).

Municipal responsibility under the Wisconsin revised public records law. *Maloney*. WBB Jan. 1983.

The public records law and the Wisconsin department of revenue. *Boykoff*. WBB Dec. 1983.

The Wis. open records act: an update on issues. *Trubek and Foley*. WBB Aug. 1986.

Toward a More Open and Accountable Government: A Call For Optimal Disclosure Under the Wisconsin Open Records Law. *Roang*. 1994 WLR 719.

Wisconsin's Public-Records Law: Preserving the Presumption of Complete Public Access in the Age of Electronic Records. *Holcomb & Isaac*. 2008 WLR 515.

Getting the Best of Both Worlds: Open Government and Economic Development. *Westerberg*. Wis. Law. Feb. 2009.

19.32 Definitions. As used in ss. 19.33 to 19.39:

(1) "Authority" means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the foregoing.

(1b) "Committed person" means a person who is committed under ch. 51, 971, 975 or 980 and who is placed in an inpatient treatment facility, during the period that the person's placement in the inpatient treatment facility continues.

(1bg) "Employee" means any individual who is employed by an authority, other than an individual holding local public office or a state public office, or any individual who is employed by an employer other than an authority.

(1c) "Incarcerated person" means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09 (4) as a condition of placement, during the period of confinement for which the person has been sentenced.

(1d) "Inpatient treatment facility" means any of the following:

(a) A mental health institute, as defined in s. 51.01 (12).

(c) A facility or unit for the institutional care of sexually violent persons specified under s. 980.065.

(d) The Milwaukee County mental health complex established under s. 51.08.

(1de) "Local governmental unit" has the meaning given in s. 19.42 (7u).

(1dm) "Local public office" has the meaning given in s. 19.42 (7w), and also includes any appointive office or position of a local governmental unit in which an individual serves as the head of a department, agency, or division of the local governmental unit, but does not include any office or position filled by a municipal employee, as defined in s. 111.70 (1) (i).

(1e) "Penal facility" means a state prison under s. 302.01, county jail, county house of correction or other state, county or municipal correctional or detention facility.

(1m) "Person authorized by the individual" means the parent, guardian, as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of a child, as defined in s. 48.02 (2), the guardian of an individual adjudicated incompetent in this state, the personal representative or spouse of an individual who is deceased, or any person authorized, in writing, by the individual to exercise the rights granted under this section.

(1r) "Personally identifiable information" has the meaning specified in s. 19.62 (5).

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(2g) "Record subject" means an individual about whom personally identifiable information is contained in a record.

(3) "Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

(4) "State public office" has the meaning given in s. 19.42 (13), but does not include a position identified in s. 20.923 (6) (f) to (gm).

History: 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263, 491; 1995 a. 158; 1997 a. 79, 94; 1999 a. 9; 2001 a. 16; 2003 a. 47; 2005 a. 387; 2007 a. 20.

NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.

A study commissioned by the corporation counsel and used in various ways was not a "draft" under sub. (2), although it was not in final form. A document prepared other than for the originator's personal use, although in preliminary form or marked "draft," is a record. *Fox v. Bock*, 149 Wis. 2d 403, 438 N.W.2d 589 (1989).

A settlement agreement containing a pledge of confidentiality and kept in the possession of a school district's attorney was a public record subject to public access. *Journal/Sentinel v. Shorewood School Bd.* 186 Wis. 2d 443, 521 N.W.2d 165 (Ct. App. 1994).

Individuals confined as sexually violent persons under ch. 980 are not "incarcerated" under sub. (1c). *Klein v. Wisconsin Resource Center*, 218 Wis. 2d 487, 582 N.W.2d 44 (Ct. App. 1998), 97–0679.

A nonprofit corporation that receives 50% of its funds from a municipality or county is an authority under sub. (1) regardless of the source from which the municipality or county obtained those funds. *Cavey v. Walrath*, 229 Wis. 2d 105, 598 N.W.2d 240 (Ct. App. 1999), 98–0072.

A person aggrieved by a request made under the open records law has standing to raise a challenge that the requested materials are not records because they fall within the exception for copyrighted material under sub. (2). Under the facts of this case, the language of sub. (2), when viewed in light of the fair use exception to copyright infringement, applied so that the disputed materials were records within the statutory definition. *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06–1143.

"Record" in sub. (2) and s. 19.35 (5) does not include identical copies of otherwise available records. A copy that is not different in some meaningful way from an original, regardless of the form of the original, is an identical copy. If a copy differs in some significant way for purposes of responding to an open records request, then it is not truly an identical copy, but instead a different record. *Stone v. Board of Regents of the University of Wisconsin*, 2007 WI App 223, 305 Wis. 2d 679, 741 N.W.2d 774, 06–2537.

A municipality's independent contractor assessor was not an authority under sub. (1) and was not a proper recipient of an open records request. In this case, only the municipalities themselves were the "authorities" for purposes of the open records

law. Accordingly, only the municipalities were proper recipients of the relevant open records requests. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736, 05–1473.

A corporation is quasi-governmental if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status, requiring a case-by-case analysis. Here, a primary consideration was that the body was funded exclusively by public tax dollars or interest thereon. Additionally, its office was located in the municipal building, it was listed on the city Web site, the city provided it with clerical support and office supplies, all its assets revert to the city if it ceases to exist, its books are open for city inspection, the mayor and another city official are directors, and it had no clients other than the city. *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295, 06–0662.

In determining whether a document is a record under sub. (2), the focus is on the content of the document. To be a record, the content of the document must have a connection to a government function. In this case, the contents of teachers' personal e-mails had no connection to a government function and therefore are not records under sub. (2). The contents of personal e-mails could, however, be records under the public records law under certain circumstances. *Schill v. Wisconsin Rapids School District*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177, 08–0967.

"Records" must have some relation to the functions of the agency. 72 Atty. Gen. 99.

The treatment of drafts under the public records law is discussed. 77 Atty. Gen. 100.

Applying Open Records Policy to Wisconsin District Attorneys: Can Charging Guidelines Promote Public Awareness? Mayer. 1996 WLR 295.

19.33 Legal custodians. (1) An elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

(2) The chairperson of a committee of elected officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

(3) The cochairpersons of a joint committee of elected officials, or the designee of the cochairpersons, are the legal custodians of the records of the joint committee.

(4) Every authority not specified in subs. (1) to (3) shall designate in writing one or more positions occupied by an officer or employee of the authority or the unit of government of which it is a part as a legal custodian to fulfill its duties under this subchapter. In the absence of a designation the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this subchapter. Each authority shall provide the name of the legal custodian and a description of the nature of his or her duties under this subchapter to all employees of the authority entrusted with records subject to the legal custodian's supervision.

(5) Notwithstanding sub. (4), if an authority specified in sub. (4) or the members of such an authority are appointed by another authority, the appointing authority may designate a legal custodian for records of the authority or members of the authority appointed by the appointing authority, except that if such an authority is attached for administrative purposes to another authority, the authority performing administrative duties shall designate the legal custodian for the authority for whom administrative duties are performed.

(6) The legal custodian of records maintained in a publicly owned or leased building or the authority appointing the legal custodian shall designate one or more deputies to act as legal custodian of such records in his or her absence or as otherwise required to respond to requests as provided in s. 19.35 (4). This subsection does not apply to members of the legislature or to members of any local governmental body.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

(8) No elected official of a legislative body has a duty to act as or designate a legal custodian under sub. (4) for the records of any committee of the body unless the official is the highest ranking officer or chief administrative officer of the committee or is designated the legal custodian of the committee's records by rule or by law.

History: 1981 c. 335.

The right to privacy law, s. 895.50, [now s. 995.50] does not affect the duties of a custodian of public records under s. 19.21, 1977 stats. 68 Atty. Gen. 68.

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. The notice shall also separately identify each position of the authority that constitutes a local public office or a state public office. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335; 2003 a. 47.

NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.

19.345 Time computation. In ss. 19.33 to 19.39, when a time period is provided for performing an act, whether the period is expressed in hours or days, the whole of Saturday, Sunday, and any legal holiday, from midnight to midnight, shall be excluded in computing the period.

History: 2003 a. 47.

NOTE: 2003 Wis. Act 47, which creates this section, contains extensive explanatory notes.

19.35 Access to records; fees. (1) RIGHT TO INSPECTION.

(a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

(am) In addition to any right under par. (a), any requester who is an individual or person authorized by the individual, has a right to inspect any record containing personally identifiable information pertaining to the individual that is maintained by an authority and to make or receive a copy of any such information. The right to inspect or copy a record under this paragraph does not apply to any of the following:

1. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or

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court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.

2. Any record containing personally identifiable information that, if disclosed, would do any of the following:

- a. Endanger an individual's life or safety.
- b. Identify a confidential informant.
- c. Endanger the security, including the security of the population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85 (2) (bg), juvenile correctional facility, as defined in s. 938.02 (10p), secured residential care center for children and youth, as defined in s. 938.02 (15g), mental health institute, as defined in s. 51.01 (12), center for the developmentally disabled, as defined in s. 51.01 (3), or facility, specified under s. 980.065, for the institutional care of sexually violent persons.
- d. Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or facility identified in subd. 2. c.

3. Any record that is part of a records series, as defined in s. 19.62 (7), that is not indexed, arranged or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record. If a requester appears personally to request a copy of a record that permits photocopying, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.

(c) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a comprehensible audio tape recording a copy of the tape recording substantially as audible as the original. The authority may instead provide a transcript of the recording to the requester if he or she requests.

(d) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a video tape recording a copy of the tape recording substantially as good as the original.

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper.

(em) If an authority receives a request to inspect or copy a record that is in handwritten form or a record that is in the form of a voice recording which the authority is required to withhold or from which the authority is required to delete information under s. 19.36 (8) (b) because the handwriting or the recorded voice would identify an informant, the authority shall provide to the requester, upon his or her request, a transcript of the record or the information contained in the record if the record or information is otherwise subject to public inspection and copying under this subsection.

(f) Notwithstanding par. (b) and except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (c) to (e) the form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable

limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (am), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(L) Except as necessary to comply with pars. (c) to (e) or s. 19.36 (6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.

(2) FACILITIES. The authority shall provide any person who is authorized to inspect or copy a record under sub. (1) (a), (am), (b) or (f) with facilities comparable to those used by its employees to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) FEES. (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more.

(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

(f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds \$5. If the requester is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by that requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.

(g) Notwithstanding par. (a), if a record is produced or collected by a person who is not an authority pursuant to a contract entered into by that person with an authority, the authorized fees for obtaining a copy of the record may not exceed the actual, necessary, and direct cost of reproduction or transcription of the

record incurred by the person who makes the reproduction or transcription, unless a fee is otherwise established or authorized to be established by law.

(4) **TIME FOR COMPLIANCE AND PROCEDURES.** (a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

(c) If an authority receives a request under sub. (1) (a) or (am) from an individual or person authorized by the individual who identifies himself or herself and states that the purpose of the request is to inspect or copy a record containing personally identifiable information pertaining to the individual that is maintained by the authority, the authority shall deny or grant the request in accordance with the following procedure:

1. The authority shall first determine if the requester has a right to inspect or copy the record under sub. (1) (a).

2. If the authority determines that the requester has a right to inspect or copy the record under sub. (1) (a), the authority shall grant the request.

3. If the authority determines that the requester does not have a right to inspect or copy the record under sub. (1) (a), the authority shall then determine if the requester has a right to inspect or copy the record under sub. (1) (am) and grant or deny the request accordingly.

(5) **RECORD DESTRUCTION.** No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action relating to a record has been commenced under s. 19.37, the record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

(6) **ELECTED OFFICIAL RESPONSIBILITIES.** No elected official is responsible for the record of any other elected official unless he or she has possession of the record of that other official.

(7) **LOCAL INFORMATION TECHNOLOGY AUTHORITY RESPONSIBILITY FOR LAW ENFORCEMENT RECORDS.** (a) In this subsection:

1. "Law enforcement agency" has the meaning given s. 165.83 (1) (b).

2. "Law enforcement record" means a record that is created or received by a law enforcement agency and that relates to an investigation conducted by a law enforcement agency or a request for a law enforcement agency to provide law enforcement services.

3. "Local information technology authority" means a local public office or local governmental unit whose primary function is information storage, information technology processing, or other information technology usage.

(b) For purposes of requests for access to records under sub. (1), a local information technology authority that has custody of a law enforcement record for the primary purpose of information

storage, information technology processing, or other information technology usage is not the legal custodian of the record. For such purposes, the legal custodian of a law enforcement record is the authority for which the record is stored, processed, or otherwise used.

(c) A local information technology authority that receives a request under sub. (1) for access to information in a law enforcement record shall deny any portion of the request that relates to information in a local law enforcement record.

History: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344; 2009 a. 259, 370.

NOTE: The following annotations relate to public records statutes in effect prior to the creation of s. 19.35 by ch. 335, laws of 1981.

A mandamus petition to inspect a county hospital's statistical, administrative, and other records not identifiable with individual patients, states a cause of action under this section. *State ex rel. Dalton v. Mundy*, 80 Wis. 2d 190, 257 N.W.2d 877 (1977).

Police daily arrest lists must be open for public inspection. *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979).

This section is a statement of the common law rule that public records are open to public inspection subject to common law limitations. Section 59.14 [now 59.20 (3)] is a legislative declaration granting persons who come under its coverage an absolute right of inspection subject only to reasonable administrative regulations. *State ex rel. Bilder v. Town of Delavan*, 112 Wis. 2d 539, 334 N.W.2d 252 (1983).

A newspaper had the right to intervene to protect its right to examine sealed court files. *State ex rel. Bilder v. Town of Delavan* 112 Wis. 2d 539, 334 N.W.2d 252 (1983).

Examination of birth records cannot be denied simply because the examiner has a commercial purpose. 58 Atty. Gen. 67.

Consideration of a resolution is a formal action of an administrative or minor governing body. When taken in a proper closed session, the resolution and result of the vote must be made available for public inspection absent a specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Inspection of public records obtained under official pledges of confidentiality may be denied if: 1) a clear pledge has been made in order to obtain the information; 2) the pledge was necessary to obtain the information; and 3) the custodian determines that the harm to the public interest resulting from inspection would outweigh the public interest in full access to public records. The custodian must permit inspection of information submitted under an official pledge of confidentiality if the official or agency had specific statutory authority to require its submission. 60 Atty. Gen. 284.

The right to inspection and copying of public records in decentralized offices is discussed. 61 Atty. Gen. 12.

Public records subject to inspection and copying by any person would include a list of students awaiting a particular program in a VTAE (technical college) district school. 61 Atty. Gen. 297.

The investment board can only deny members of the public from inspecting and copying portions of the minutes relating to the investment of state funds and documents pertaining thereto on a case-by-case basis if valid reasons for denial exist and are specially stated. 61 Atty. Gen. 361.

Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record. 63 Atty. Gen. 143.

The department of administration probably had authority under s. 19.21 (1) and (2), 1973 stats., to provide a private corporation with camera-ready copy of session laws that is the product of a printout of computer stored public records if the costs are minimal. The state cannot contract on a continuing basis for the furnishing of this service. 63 Atty. Gen. 302.

The scope of the duty of the governor to allow members of the public to examine and copy public records in his custody is discussed. 63 Atty. Gen. 400.

The public's right to inspect land acquisition files of the department of natural resources is discussed. 63 Atty. Gen. 573.

Financial statements filed in connection with applications for motor vehicle dealers' and motor vehicle salvage dealers' licenses are public records, subject to limitations. 66 Atty. Gen. 302.

Sheriff's radio logs, intradepartmental documents kept by the sheriff, and blood test records of deceased automobile drivers in the hands of the sheriff are public records, subject to limitations. 67 Atty. Gen. 12.

Plans and specifications filed under s. 101.12 are public records and are available for public inspection. 67 Atty. Gen. 214.

Under s. 19.21 (1), district attorneys must indefinitely preserve papers of a documentary nature evidencing activities of prosecutor's office. 68 Atty. Gen. 17.

The right to examine and copy computer-stored information is discussed. 68 Atty. Gen. 231.

After the transcript of court proceedings is filed with the clerk of court, any person may examine or copy the transcript. 68 Atty. Gen. 313.

NOTE: The following annotations relate to s. 19.35.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by sub. (1) (a) to state specific and sufficient public policy reasons why the public's interest in nondisclosure outweighed the right of inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Board*, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

Courts must apply the open records balancing test to questions involving disclosure of court records. The public interests favoring secrecy must outweigh those favoring disclosure. *C. L. v. Edson*, 140 Wis. 2d 168, 409 N.W.2d 417 (Ct. App. 1987).

Public records germane to pending litigation were available under this section even though the discovery cutoff deadline had passed. *State ex rel. Lank v. Rzentkowski*, 141 Wis. 2d 846, 416 N.W.2d 635 (Ct. App. 1987).

To uphold a custodian's denial of access, an appellate court will inquire whether the trial court made a factual determination supported by the record of whether docu-

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ments implicate a secrecy interest, and, if so, whether the secrecy interest outweighs the interests favoring release. *Milwaukee Journal v. Call*, 153 Wis. 2d 313, 450 N.W.2d 515 (Ct. App. 1989).

That releasing records would reveal a confidential informant's identity was a legally specific reason for denial of a records request. The public interest in not revealing the informant's identity outweighed the public interest in disclosure of the records. *Mayfair Chrysler–Plymouth v. Baldarotta*, 162 Wis. 2d 142, 469 N.W.2d 638 (1991).

Items subject to examination under s. 346.70 (4) (f) may not be withheld by the prosecution under a common law rule that investigative material may be withheld from a criminal defendant. *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App. 1991).

Prosecutors' files are exempt from public access under the common law. *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991).

Records relating to pending claims against the state under s. 893.82 need not be disclosed under s. 19.35. Records of non-pending claims must be disclosed unless an *in camera* inspection reveals that the attorney–client privilege would be violated. *George v. Record Custodian*, 169 Wis. 2d 573, 485 N.W.2d 460 (Ct. App. 1992).

The public records law confers no exemption as of right on indigents from payment of fees under (3). *George v. Record Custodian*, 169 Wis. 2d 573, 485 N.W.2d 460 (Ct. App. 1992).

A settlement agreement containing a pledge of confidentiality and kept in the possession of a school district's attorney was a public record subject to public access under sub. (3). *Journal/Sentinel v. School District of Shorewood*, 186 Wis. 2d 443, 521 N.W.2d 165 (Ct. App. 1994).

The denial of a prisoner's information request regarding illegal behavior by guards on the grounds that it could compromise the guards' effectiveness and subject them to harassment was insufficient. *State ex. rel. Ledford v. Turcotte*, 195 Wis. 2d 244, 536 N.W.2d 130 (Ct. App. 1995), 94–2710.

The amount of prepayment required for copies may be based on a reasonable estimate. *State ex rel. Hill v. Zimmerman*, 196 Wis. 2d 419, 538 N.W.2d 608 (Ct. App. 1995), 94–1861.

The *Foust* decision does not automatically exempt all records stored in a closed prosecutorial file. The exemption is limited to material actually pertaining to the prosecution. *Nichols v. Bennett*, 199 Wis. 2d 268, 544 N.W.2d 428 (1996), 93–2480.

Department of Regulation and Licensing test scores were subject to disclosure under the open records law. *Munroe v. Braatz*, 201 Wis. 2d 442, 549 N.W.2d 452 (Ct. App. 1996), 95–2557.

Subs. (1) (i) and (3) (f) did not permit a demand for prepayment of \$1.29 in response to a mail request for a record. *Borzych v. Paluszcyk*, 201 Wis. 2d 523, 549 N.W.2d 253 (Ct. App. 1996), 95–1711.

An agency cannot promulgate an administrative rule that creates an exception to the open records law. *Chavala v. Bubolz*, 204 Wis. 2d 82, 552 N.W.2d 892 (Ct. App. 1996), 95–3120.

While certain statutes grant explicit exceptions to the open records law, many statutes set out broad categories of records not open to an open records request. A custodian faced with such a broad statute must state with specificity a public policy reason for refusing to release the requested record. *Chavala v. Bubolz*, 204 Wis. 2d 82, 552 N.W.2d 892 (Ct. App. 1996), 95–3120.

The custodian is not authorized to comply with an open records request at some unspecified date in the future. Such a response constitutes a denial of the request. *WTMJ, Inc. v. Sullivan*, 204 Wis. 2d 452, 555 N.W.2d 125 (Ct. App. 1996), 96–0053.

Subject to the redaction of officers' home addresses and supervisors' conclusions and recommendations regarding discipline, police records regarding the use of deadly force were subject to public inspection. *State ex rel. Journal/Sentinel, Inc. v. Arreola*, 207 Wis. 2d 496, 558 N.W.2d 670 (Ct. App. 1996), 95–2956.

A public school student's interim grades are pupil records specifically exempted from disclosure under s. 118.125. If records are specifically exempted from disclosure, failure to specifically state reasons for denying an open records request for those records does not compel disclosure of those records. *State ex rel. Blum v. Board of Education*, 209 Wis. 2d 377, 565 N.W.2d 140 (Ct. App. 1997), 96–0758.

Requesting a copy of 180 hours of audiotape of "911" calls, together with a transcription of the tape and log of each transmission received, was a request without "reasonable limitation" and was not a "sufficient request" under sub. (1) (h). *Schopper v. Gehring*, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997), 96–2782.

If the requested information is covered by an exempting statute that does not require a balancing of public interests, there is no need for a custodian to conduct such a balancing. Written denial claiming a statutory exception by citing the specific statute or regulation is sufficient. *State ex rel. Savinski v. Kimble*, 221 Wis. 2d 833, 586 N.W.2d 36 (Ct. App. 1998), 97–3356.

Protecting persons who supply information or opinions about an inmate to the parole commission is a public interest that may outweigh the public interest in access to documents that could identify those persons. *State ex rel. Bergmann v. Faust*, 226 Wis. 2d 273, 595 N.W.2d 75 (Ct. App. 1999), 98–2537.

The ultimate purchasers of municipal bonds from the bond's underwriter, whose only obligation was to purchase the bonds, were not "contractor's records under sub. (3)". *Machotka v. Village of West Salem*, 2000 WI App 43, 233 Wis. 2d 106, 607 N.W.2d 319, 99–1163.

Sub. (1) (b) gives the record custodian, and not the requester, the choice of how a record will be copied. The requester cannot elect to use his or her own copying equipment without the custodian's permission. *Grebner v. Schiebel*, 2001 WI App 17, 240 Wis. 2d 551, 624 N.W.2d 892, 00–1549.

Requests for university admissions records focusing on test scores, class rank, grade point average, race, gender, ethnicity, and socio-economic background was not a request for personally identifiable information, and release was not barred by federal law or public policy. That the requests would require the university to redact information from thousands of documents under s. 19.36 (6) did not essentially require the university to create new records and, as such, did not provide grounds for denying the request under s. 19.35 (1) (L). *Osborn v. Board of Regents of the University of Wisconsin System*, 2002 WI 83, 254 Wis. 2d 266, 647 N.W.2d 158, 00–2861.

The police report of a closed investigation regarding a teacher's conduct that did not lead either to an arrest, prosecution, or any administrative disciplinary action, was subject to release. *Linzmeier v. Forcey*, 2002 WI 84, 254 Wis. 2d 306, 646 N.W.2d 811, 01–0197.

The John Doe statute, s. 968.26, which authorizes secrecy in John Doe proceedings, is a clear statement of legislative policy and constitutes a specific exception to the public records law. On review of a petition for a writ stemming from a secret John Doe proceeding, the court of appeals may seal parts of a record in order to comply with existing secrecy orders issued by the John Doe judge. Unnamed Persons Numbers 1, 2, and 3 v. State, 2003 WI 30, 260 Wis. 2d 653, 660 N.W.2d 260, 01–3220.

Sub. (1) (am) is not subject to a balancing of interests. Therefore, the exceptions to sub. (1) (am) should not be narrowly construed. A requester who does not qualify for access to records under sub. (1) (am) will always have the right to seek records under sub. (1) (a), in which case the records custodian must determine whether the requested records are subject to a statutory or common law exception, and if not whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure determined by applying a balancing test. *Hempel v. City of Baraboo*, 2005 WI 120, 284 Wis. 2d 162, 699 N.W.2d 551, 03–0500.

Misconduct investigation and disciplinary records are not excepted from public disclosure under sub. (10) (d). Sub. (10) (b) is the only exception to the open records law relating to investigations of possible employee misconduct. *Kroepin v. DNR*, 2006 WI App 227, 297 Wis. 2d 254, 725 N.W.2d 286, 05–1093.

Sub. (1) (a) does not mandate that, when a meeting is closed under s. 19.85, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeier*. *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06–1143.

A general request does not trigger the sub. (4) (c) review sequence. Sub. (4) (c) recites the procedure to be employed if an authority receives a request under (1) (a) or (am). An authority is an entity having custody of a record. The definition does not include a reviewing court. *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177, 06–2071.

The open records law cannot be used to circumvent established principles that shield attorney work product, nor can it be used as a discovery tool. The presumption of access under sub. (1) (a) is defeated because the attorney work product qualifies under the "otherwise provided by law" exception. *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177, 06–2071.

Sub. (1) (am) 1. plainly allows a records custodian to deny access to one who is, in effect, a potential adversary in litigation or other proceeding unless or until required to do so under the rules of discovery in actual litigation. The balancing of interests under sub. (1) (a) must include examining all the relevant factors in the context of the particular circumstances and may include the balancing the competing interests consider sub. (1) (am) 1. when evaluating the entire set of facts and making its specific demonstration of the need for withholding the records. *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177, 06–2071.

The sub. (1) (am) analysis is succinct. There is no balancing. There is no requirement that the investigation be current for the exemption for records "collected or maintained in connection with a complaint, investigation or other circumstances that may lead to . . . [a] court proceeding" to apply. *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177, 06–2071.

"Record" in sub. (5) and s. 19.32 (2) does not include identical copies of otherwise available records. A copy that is not different in some meaningful way from an original, regardless of the form of the original, is an identical copy. If a copy differs in some significant way for purposes of responding to an open records request, then it is not truly an identical copy, but instead a different record. *Stone v. Board of Regents of the University of Wisconsin*, 2007 WI App 223, 305 Wis. 2d 679, 741 N.W.2d 774, 06–2537.

Schopper does not permit a records custodian to deny a request based solely on the custodian's assertion that the request could reasonably be narrowed, nor does *Schopper* require that the custodian take affirmative steps to limit the search as a prerequisite to denying a request under sub. (1) (h). The fact that the request may result in the generation of a large volume of records is not, in itself, a sufficient reason to deny a request as not properly limited, but at some point, an overly broad request becomes sufficiently excessive to warrant rejection under sub. (1) (h). *Gehl v. Connors*, 2007 WI App 238, 306 Wis. 2d 247, 742 N.W.2d 530, 06–2455.

The public records law addresses the duty to disclose records; it does not address the duty to retain records. An agency's alleged failure to keep sought-after records may not be attacked under the public records law. Section 19.21 relates to records retention and is not a part of the public records law. *Gehl v. Connors*, 2007 WI App 238, 306 Wis. 2d 247, 742 N.W.2d 530, 06–2455.

Foust held that a common law categorical exception exists for records in the custody of a district attorney's office, not for records in the custody of a law enforcement agency. A sheriff's department is legally obligated to provide public access to records in its possession, which cannot be avoided by invoking a common law exception that is exclusive to the records of another custodian. That the same record was in the custody of both the law enforcement agency and the district attorney does not change the outcome. To the extent that a sheriff's department can articulate a policy reason why the public interest in disclosure is outweighed by the interest in withholding the particular record it may properly deny access. *Portage Daily Register v. Columbia Co. Sheriff's Department*, 2008 WI App 30, 308 Wis. 2d 357, 746 N.W.2d 525, 07–0323.

When requests are complex, municipalities should be afforded reasonable latitude in time for their responses. An authority should not be subjected to the burden and expense of a premature public records lawsuit while it is attempting in good faith to respond, or to determine how to respond, to a request. What constitutes a reasonable time for a response by an authority depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736, 05–1473.

A custodian may not require a requester to pay the cost of an unrequested certification. Unless the fee for copies of records is established by law, a custodian may not charge more than the actual and direct cost of reproduction. 72 Atty. Gen. 36.

Copying fees, but not location fees, may be imposed on a requester for the cost of a computer run. 72 Atty. Gen. 68.

The fee for copying public records is discussed. 72 Atty. Gen. 150.

Public records relating to employee grievances are not generally exempt from disclosure. Nondisclosure must be justified on a case-by-case basis. 73 Atty. Gen. 20.

The disclosure of an employee's birthdate, sex, ethnic heritage, and handicapped status is discussed. 73 Atty. Gen. 26.

The department of regulation and licensing may refuse to disclose records relating to complaints against health care professionals while the matters are merely "under investigation." Good faith disclosure of the records will not expose the custodian to liability for damages. Prospective continuing requests for records are not contemplated by public records law. 73 Atty. Gen. 37.

Prosecutors' case files are exempt from disclosure. 74 Atty. Gen. 4.

The relationship between the public records law and pledges of confidentiality in settlement agreements is discussed. 74 Atty. Gen. 14.

A computerized compilation of bibliographic records is discussed in relation to copyright law; a requester is entitled to a copy of a computer tape or a printout of information on the tape. 75 Atty. Gen. 133 (1986).

Ambulance records relating to medical history, condition, or treatment are confidential while other ambulance call records are subject to disclosure under the public records law. 78 Atty. Gen. 71.

Courts are likely to require disclosure of legislators' mailing and distribution lists absent a factual showing that the public interest in withholding the records outweighs the public interest in their release. OAG 2–03.

If a legislator custodian decides that a mailing or distribution list compiled and used for official purposes must be released under the public records statute, the persons whose names, addresses or telephone numbers are contained on the list are not entitled to notice and the opportunity to challenge the decision prior to release of the record. OAG 2–03.

Access Denied: How *Woznicki v. Erickson* Reversed the Statutory Presumption of Openness in the Wisconsin Open Records Law. Munro. 2002 WLR 1197.

19.356 Notice to record subject; right of action.

(1) Except as authorized in this section or as otherwise provided by statute, no authority is required to notify a record subject prior to providing to a requester access to a record containing information pertaining to that record subject, and no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record.

(2) (a) Except as provided in pars. (b) and (c) and as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under subs. (3) and (4). This paragraph applies only to the following records:

1. A record containing information relating to an employee that is created or kept by the authority and that is the result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer.

2. A record obtained by the authority through a subpoena or search warrant.

3. A record prepared by an employer other than an authority, if that record contains information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information.

(b) Paragraph (a) does not apply to an authority who provides access to a record pertaining to an employee to the employee who is the subject of the record or to his or her representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to a collective bargaining agreement under ch. 111.

(c) Paragraph (a) does not apply to access to a record produced in relation to a function specified in s. 106.54 or 230.45 or subch. II of ch. 111 if the record is provided by an authority having responsibility for that function.

(3) Within 5 days after receipt of a notice under sub. (2) (a), a record subject may provide written notification to the authority of his or her intent to seek a court order restraining the authority from providing access to the requested record.

(4) Within 10 days after receipt of a notice under sub. (2) (a), a record subject may commence an action seeking a court order to restrain the authority from providing access to the requested record. If a record subject commences such an action, the record subject shall name the authority as a defendant. Notwithstanding s. 803.09, the requester may intervene in the action as a matter of right. If the requester does not intervene in the action, the authority shall notify the requester of the results of the proceedings under this subsection and sub. (5).

(5) An authority shall not provide access to a requested record within 12 days of sending a notice pertaining to that record under sub. (2) (a). In addition, if the record subject commences an action under sub. (4), the authority shall not provide access to the requested record during pendency of the action. If the record subject appeals or petitions for review of a decision of the court or the time for appeal or petition for review of a decision adverse to the record subject has not expired, the authority shall not provide access to the requested record until any appeal is decided, until the period for appealing or petitioning for review expires, until a petition for review is denied, or until the authority receives written notice from the record subject that an appeal or petition for review will not be filed, whichever occurs first.

(6) The court, in an action commenced under sub. (4), may restrain the authority from providing access to the requested record. The court shall apply substantive common law principles construing the right to inspect, copy, or receive copies of records in making its decision.

(7) The court, in an action commenced under sub. (4), shall issue a decision within 10 days after the filing of the summons and complaint and proof of service of the summons and complaint upon the defendant, unless a party demonstrates cause for extension of this period. In any event, the court shall issue a decision within 30 days after those filings are complete.

(8) If a party appeals a decision of the court under sub. (7), the court of appeals shall grant precedence to the appeal over all other matters not accorded similar precedence by law. An appeal shall be taken within the time period specified in s. 808.04 (1m).

(9) (a) Except as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record containing information relating to a record subject who is an officer or employee of the authority holding a local public office or a state public office, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on the record subject, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under par. (b).

(b) Within 5 days after receipt of a notice under par. (a), a record subject may augment the record to be released with written comments and documentation selected by the record subject. Except as otherwise authorized or required by statute, the authority under par. (a) shall release the record as augmented by the record subject.

History: 2003 a. 47.

NOTE: 2003 Wis. Act 47, which creates this section, contains extensive explanatory notes.

The right of a public employee to obtain de novo judicial review of an authority's decision to allow public access to certain records granted by this section is no broader than the common law right previously recognized. It is not a right to prevent disclosure solely on the basis of a public employee's privacy and reputational interests. The public's interest in not injuring the reputations of public employees must be given due consideration, but it is not controlling. *Local 2489 v. Rock County*, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644, 03–3101.

An intervenor as of right under the statute is "a party" under sub. (8) whose appeal is subject to the "time period specified in s. 808.04 (1m)." The only time period referenced in s. 808.04 (1m) is 20 days. *Zellner v. Herrick*, 2009 WI 80, 319 Wis. 2d 532, 770 N.W.2d 305, 07–2584.

Sub. (2) (a) 1. must be interpreted as requiring notification when an authority proposes to release records in its possession that are the result of an investigation by an employer into a disciplinary or other employment matter involving an employee, but not when there has been an investigation of possible employment-related violation by the employee and the investigation is conducted by some entity other than the employee's employer. OAG 1–06.

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Sub. (2) (a) 2. is unambiguous. If an authority has obtained a record through a subpoena or a search warrant, it must provide the requisite notice before releasing the records. The duty to notify, however, does not require notice to every record subject who happens to be named in the subpoena or search warrant records. Under sub. (2) (a), DCI must serve written notice of the decision to release the record to any record subject to whom the record pertains. OAG 1–06.

To the extent any requested records proposed to be released are records prepared by a private employer and those records contain information pertaining to one of the private employer's employees, sub. (2) (a) 3. does not allow release of the information without obtaining authorization from the individual employee. OAG 1–06.

19.36 Limitations upon access and withholding.

(1) APPLICATION OF OTHER LAWS. Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6).

(2) LAW ENFORCEMENT RECORDS. Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35 (1).

(3) CONTRACTORS' RECORDS. Subject to sub. (12), each authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority. This subsection does not apply to the inspection or copying of a record under s. 19.35 (1) (am).

(4) COMPUTER PROGRAMS AND DATA. A computer program, as defined in s. 16.971 (4) (c), is not subject to examination or copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in s. 19.35 or this section.

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c).

(6) SEPARATION OF INFORMATION. If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release.

(7) IDENTITIES OF APPLICANTS FOR PUBLIC POSITIONS. (a) In this section, "final candidate" means each applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment to any state position, except a position in the classified service, or to any local public office. "Final candidate" includes, whenever there are at least 5 candidates for an office or position, each of the 5 candidates who are considered most qualified for the office or position by an authority, and whenever there are less than 5 candidates for an office or position, each such candidate. Whenever an appointment is to be made from a group of more than 5 candidates, "final candidate" also includes each candidate in the group.

(b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for appointment to a position in the state classified service or a final candidate, if an applicant makes such an indication in writing, the authority shall not provide access to any record related to the application that may reveal the identity of the applicant.

(8) IDENTITIES OF LAW ENFORCEMENT INFORMANTS. (a) In this subsection:

1. "Informant" means an individual who requests confidentiality from a law enforcement agency in conjunction with providing information to that agency or, pursuant to an express promise

of confidentiality by a law enforcement agency or under circumstances in which a promise of confidentiality would reasonably be implied, provides information to a law enforcement agency or, is working with a law enforcement agency to obtain information, related in any case to any of the following:

a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will violate a federal law, a law of any state or an ordinance of any local government.

b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law, a law of any state or an ordinance of any local government.

2. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b), and includes the department of corrections.

(b) If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a record under s. 19.35 (1) (a) that contains specific information including but not limited to a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied without identifying the informant, shall withhold the record unless the legal custodian of the record, designated under s. 19.33, makes a determination, at the time that the request is made, that the public interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs the harm done to the public interest by providing such access.

(9) RECORDS OF PLANS OR SPECIFICATIONS FOR STATE BUILDINGS. Records containing plans or specifications for any state-owned or state-leased building, structure or facility or any proposed state-owned or state-leased building, structure or facility are not subject to the right of inspection or copying under s. 19.35 (1) except as the department of administration otherwise provides by rule.

(10) EMPLOYEE PERSONNEL RECORDS. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records containing the following information, except to an employee or the employee's representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain under ch. 111 or pursuant to a collective bargaining agreement under ch. 111:

(a) Information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.

(b) Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation.

(c) Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited.

(d) Information relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.

(11) RECORDS OF AN INDIVIDUAL HOLDING A LOCAL PUBLIC OFFICE OR A STATE PUBLIC OFFICE. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records, except to an individual to the extent required under s. 103.13, containing information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an individual who holds a local public office or a state public office, unless the individual

authorizes the authority to provide access to such information. This subsection does not apply to the home address of an individual who holds an elective public office or to the home address of an individual who, as a condition of employment, is required to reside in a specified location.

(12) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is specifically authorized or required by statute, an authority shall not provide access to a record prepared or provided by an employer performing work on a project to which s. 66.0903, 66.0904, 103.49, or 103.50 applies, or on which the employer is otherwise required to pay prevailing wages, if that record contains the name or other personally identifiable information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information. In this subsection, “personally identifiable information” does not include an employee’s work classification, hours of work, or wage or benefit payments received for work on such a project.

(13) FINANCIAL IDENTIFYING INFORMATION. An authority shall not provide access to personally identifiable data that contains an individual’s account or customer number with a financial institution, as defined in s. 134.97 (1) (b), including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless specifically required by law.

History: 1981 c. 335; 1985 a. 236; 1991 a. 39, 269, 317; 1993 a. 93; 1995 a. 27; 2001 a. 16; 2003 a. 33, 47; 2005 a. 59, 253; 2007 a. 97; 2009 a. 28.

NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.

Sub. (2) does not require providing access to payroll records of subcontractors of a prime contractor of a public construction project. *Building and Construction Trades Council v. Waunakee Community School District*, 221 Wis. 2d 575, 585 N.W.2d 726 (Ct. App. 1999), 97–3282.

Production of an analog audio tape was insufficient under sub. (4) when the requester asked for examination and copying of the original digital audio tape. *State ex rel. Milwaukee Police Association v. Jones*, 2000 WI App 146, 237 Wis. 2d 840, 615 N.W.2d 190, 98–3629.

Requests for university admissions records focusing on test scores, class rank, grade point average, race, gender, ethnicity, and socio-economic background was not a request for personally identifiable information and release was not barred by federal law or public policy. That the requests would require the university to redact information from thousands of documents under s. 19.36 (6) did not essentially require the university to create new records and, as such, did not provide grounds for denying the request under sub. s. 19.35 (1) (L). *Osborn v. Board of Regents of the University of Wisconsin System*, 2002 WI 83, 254 Wis. 2d 266, 647 N.W.2d 158, 00–2861.

“Investigation” in sub. (10) (b) includes only that conducted by the public authority itself as a prelude to possible employee disciplinary action. An investigation achieves its “disposition” when the authority acts to impose discipline on an employee as a result of the investigation, regardless of whether the employee elects to pursue grievance arbitration or another review mechanism that may be available. *Local 2489 v. Rock County*, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644, 03–3101. See also, *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06–1143.

Municipalities may not avoid liability under the open records law by contracting with independent contractor assessors for the collection, maintenance, and custody of property assessment records, and then directing any requester of those records to the independent contractor assessors. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736, 05–1473.

When requests to municipalities were for electronic/digital copies of assessment records, “PDF” files were “electronic/digital” files despite the fact that the files did not have all the characteristics that the requester wished. It is not required that requesters must be given access to an authority’s electronic databases to examine them, extract information from them, or copy them. Allowing requesters such direct access to the electronic databases of an authority would pose substantial risks. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736, 05–1473.

Separation costs must be borne by the agency. 72 Atty. Gen. 99.

A computerized compilation of bibliographic records is discussed in relation to copyright law; a requester is entitled to a copy of a computer tape or a printout of information on the tape. 75 Atty. Gen. 133 (1986).

An exemption to the federal Freedom of Information Act was not incorporated under sub. (1). 77 Atty. Gen. 20.

Sub. (7) is an exception to the public records law and should be narrowly construed. In sub. (7) “applicant” and “candidate” are synonymous. “Final candidates” are the five most qualified unless there are less than five applicants, in which case all are final candidates. 81 Atty. Gen. 37.

Public access to law enforcement records. *Fitzgerald*. 68 MLR 705 (1985).

19.365 Rights of data subject to challenge; authority corrections. (1) Except as provided under sub. (2), an individual or person authorized by the individual may challenge the accuracy of a record containing personally identifiable information pertaining to the individual that is maintained by an authority if the individual is authorized to inspect the record under s. 19.35 (1) (a) or (am) and the individual notifies the authority, in writing, of the

challenge. After receiving the notice, the authority shall do one of the following:

(a) Concur with the challenge and correct the information.

(b) Deny the challenge, notify the individual or person authorized by the individual of the denial and allow the individual or person authorized by the individual to file a concise statement setting forth the reasons for the individual’s disagreement with the disputed portion of the record. A state authority that denies a challenge shall also notify the individual or person authorized by the individual of the reasons for the denial.

(2) This section does not apply to any of the following records:

(a) Any record transferred to an archival depository under s. 16.61 (13).

(b) Any record pertaining to an individual if a specific state statute or federal law governs challenges to the accuracy of the record.

History: 1991 a. 269 ss. 27d, 27e, 35am, 37am, 39am.

19.37 Enforcement and penalties. (1) MANDAMUS. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).

(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

(1m) TIME FOR COMMENCING ACTION. No action for mandamus under sub. (1) to challenge the denial of a request for access to a record or part of a record may be commenced by any committed or incarcerated person later than 90 days after the date that the request is denied by the authority having custody of the record or part of the record.

(1n) NOTICE OF CLAIM. Sections 893.80 and 893.82 do not apply to actions commenced under this section.

(2) COSTS, FEES AND DAMAGES. (a) Except as provided in this paragraph, the court shall award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (a). If the requester is a committed or incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(b) In any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that the authority acted in a willful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.

(3) PUNITIVE DAMAGES. If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester.

(4) PENALTY. Any authority which or legal custodian under s. 19.33 who arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be required to forfeit not more than \$1,000. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award

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any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

History: 1981 c. 335, 391; 1991 a. 269 s. 43d; 1995 a. 158; 1997 a. 94.

A party seeking fees under sub. (2) must show that the prosecution of an action could reasonably be regarded as necessary to obtain the information and that a "causal nexus" exists between that action and the agency's surrender of the information. *State ex rel. Vaughan v. Faust*, 143 Wis. 2d 868, 422 N.W.2d 898 (Ct. App. 1988).

If an agency exercises due diligence but is unable to respond timely to a records request, the plaintiff must show that a mandamus action was necessary to secure the records release to qualify for award of fees and costs under sub. (2). *Racine Education Association v. Racine Board of Education*, 145 Wis. 2d 518, 427 N.W.2d 414 (Ct. App. 1988).

Assuming sub. (1) (a) applies before mandamus is issued, the trial court retains discretion to refuse counsel's participation in an *in camera* inspection. *Milwaukee Journal v. Call*, 153 Wis. 2d 313, 450 N.W.2d 515 (Ct. App. 1989).

If the trial court has an incomplete knowledge of the contents of the public records sought, it must conduct an *in camera* inspection to determine what may be disclosed following a custodian's refusal. *State ex rel. Morke v. Donnelly*, 155 Wis. 2d 521, 455 N.W.2d 893 (1990).

A *pro se* litigant is not entitled to attorney fees. *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App. 1991).

A favorable judgment or order is not a necessary condition precedent for finding that a party prevailed against an agency under sub. (2). A causal nexus must be shown between the prosecution of the mandamus action and the release of the requested information. *Eau Claire Press Co. v. Gordon*, 176 Wis. 2d 154, 499 N.W.2d 918 (Ct. App. 1993).

Actions brought under the open meetings and open records laws are exempt from the notice provisions of s. 893.80 (1). *Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94–2809.

An inmate's right to mandamus under this section is subject to s. 801.02 (7), which requires exhaustion of administrative remedies before an action may be commenced. *Moore v. Stahowiak*, 212 Wis. 2d 744, 569 N.W.2d 711 (Ct. App. 1997), 96–2547.

When requests are complex, municipalities should be afforded reasonable latitude in time for their responses. An authority should not be subjected to the burden and expense of a premature public records lawsuit while it is attempting in good faith to respond, or to determine how to respond, to a request. What constitutes a reasonable time for a response by an authority depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and other related considerations. *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736, 05–1473.

The legislature did not intend to allow a record requester to control or appeal a mandamus action brought by the attorney general under sub. (1) (b). Sub. (1) outlines two distinct courses of action when a records request is denied, dictates distinct courses of action, and prescribes different remedies for each course. Nothing suggests that a requester is hiring the attorney general as a sort of private counsel to proceed with the case, or that the requester would be a named plaintiff in the case with the attorney general appearing as counsel of record when proceeding under sub. (1) (b). *State v. Zien*, 2008 WI App 153, 314 Wis. 2d 340, 761 N.W.2d 15, 07–1930.

Actual damages are the liability of the agency. Punitive damages and forfeitures can be the liability of either the agency or the legal custodian, or both. Section 895.46 (1) (a) probably provides indemnification for punitive damages assessed against a custodian, but not for forfeitures. 72 Atty. Gen. 99.

19.39 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

History: 1981 c. 335.

SUBCHAPTER III

CODE OF ETHICS FOR PUBLIC
OFFICIALS AND EMPLOYEES

19.41 Declaration of policy. (1) It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.

(2) It is the intent of the legislature that in its operations the board shall protect to the fullest extent possible the rights of individuals affected.

History: 1973 c. 90; Stats. 1973 s. 11.01; 1973 c. 334 s. 33; Stats. 1973 s. 19.41; 1977 c. 277.

19.42 Definitions. In this subchapter:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

(3) "Board" means the government accountability board.

(3m) "Candidate," except as otherwise provided, has the meaning given in s. 11.01 (1).

(3s) "Candidate for local public office" means any individual who files nomination papers and a declaration of candidacy under s. 8.21 or who is nominated at a caucus under s. 8.05 (1) for the purpose of appearing on the ballot for election as a local public official or any individual who is nominated for the purpose of appearing on the ballot for election as a local public official through the write-in process or by appointment to fill a vacancy in nomination and who files a declaration of candidacy under s. 8.21.

(4) "Candidate for state public office" means any individual who files nomination papers and a declaration of candidacy under s. 8.21 or who is nominated at a caucus under s. 8.05 (1) for the purpose of appearing on the ballot for election as a state public official or any individual who is nominated for the purpose of appearing on the ballot for election as a state public official through the write-in process or by appointment to fill a vacancy in nomination and who files a declaration of candidacy under s. 8.21.

(4g) "Clearly identified," when used in reference to a communication containing a reference to a person, means one of the following:

(a) The person's name appears.

(b) A photograph or drawing of the person appears.

(c) The identity of the person is apparent by unambiguous reference.

(4r) "Communication" means a message transmitted by means of a printed advertisement, billboard, handbill, sample ballot, radio or television advertisement, telephone call, or any medium that may be utilized for the purpose of disseminating or broadcasting a message, but not including a poll conducted solely for the purpose of identifying or collecting data concerning the attitudes or preferences of electors.

(5) "Department" means the legislature, the University of Wisconsin System, any authority or public corporation created and regulated by an act of the legislature and any office, department, independent agency or legislative service agency created under ch. 13, 14 or 15, any technical college district or any constitutional office other than a judicial office. In the case of a district attorney, "department" means the department of administration unless the context otherwise requires.

(5m) "Elective office" means an office regularly filled by vote of the people.

(6) "Gift" means the payment or receipt of anything of value without valuable consideration.

(7) "Immediate family" means:

(a) An individual's spouse; and

(b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

(7m) “Income” has the meaning given under section 61 of the internal revenue code.

(7s) “Internal revenue code” has the meanings given under s. 71.01 (6).

(7u) “Local governmental unit” means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(7w) “Local public office” means any of the following offices, except an office specified in sub. (13):

- (a) An elective office of a local governmental unit.
- (b) A county administrator or administrative coordinator or a city or village manager.
- (c) An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.
- (cm) The position of member of the board of directors of a local exposition district under subch. II of ch. 229 not serving for a specified term.
- (d) An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(7x) “Local public official” means an individual holding a local public office.

(8) “Ministerial action” means an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual’s own judgment as to the propriety of the action being taken.

(9) “Nominee” means any individual who is nominated by the governor for appointment to a state public office and whose nomination requires the advice and consent of the senate.

(10) “Official required to file” means:

- (b) A member of a technical college district board or district director of a technical college, or any individual occupying the position of assistant, associate or deputy district director of a technical college.
- (c) A state public official identified under s. 20.923 except an official holding a state public office identified under s. 20.923 (6) (h).
- (d) A state public official whose appointment to state public office requires the advice and consent of the senate, except a member of the board of directors of the Bradley Center Sports and Entertainment Corporation created under ch. 232.
- (e) An individual appointed by the governor or the state superintendent of public instruction pursuant to s. 17.20 (2) other than a trustee of any private higher educational institution receiving state appropriations.
- (f) An auditor for the legislative audit bureau.
- (g) The chief clerk and sergeant at arms of each house of the legislature.
- (h) The members and employees of the Wisconsin Housing and Economic Development Authority, except clerical employees.
- (i) A municipal judge.
- (j) A member or the executive director of the judicial commission.
- (k) A division administrator of an office created under ch. 14 or a department or independent agency created or continued under ch. 15.

(L) The executive director, executive assistant to the executive director, internal auditor, chief investment officer, chief financial officer, chief legal counsel, chief risk officer and investment directors of the investment board.

(m) The executive director, members and employees of the World Dairy Center Authority, except clerical employees.

(n) The chief executive officer and members of the board of directors of the University of Wisconsin Hospitals and Clinics Authority.

(o) The chief executive officer and members of the board of directors of the Fox River Navigational System Authority.

(q) The executive director and members of the board of directors of the Wisconsin Aerospace Authority.

(r) The employees and members of the board of directors of the Lower Fox River Remediation Authority.

(s) The executive director and members of the board of directors of the Wisconsin Quality Home Care Authority.

(sm) The members of the board of directors of the Wisconsin Economic Development Corporation employed in the private sector who are appointed by the speaker of the assembly and the senate majority leader.

(11) “Organization” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

(11m) “Political party” means a political organization under whose name individuals who seek elective public office appear on the ballot at any election or any national, state, or local unit or affiliate of that organization.

(12) “Security” has the meaning given under s. 551.102 (28), except that the term does not include a certificate of deposit or a deposit in a savings and loan association, savings bank, credit union or similar association organized under the laws of any state.

(13) “State public office” means:

- (a) All positions to which individuals are regularly appointed by the governor, except the position of trustee of any private higher educational institution receiving state appropriations and the position of member of the district board of a local professional baseball park district created under subch. III of ch. 229 and the position of member of the district board of a local cultural arts district created under subch. V of ch. 229.
- (b) The positions of associate and assistant vice presidents of the University of Wisconsin System and vice chancellors identified in s. 20.923 (5).
- (c) All positions identified under s. 20.923 (2), (4), (4g), (6) (f) to (h), (7), and (8) to (10), except clerical positions.
- (e) The chief clerk and sergeant at arms of each house of the legislature or a full-time, permanent employee occupying the position of auditor for the legislative audit bureau.
- (f) A member of a technical college district board or district director of a technical college, or any position designated as assistant, associate or deputy district director of a technical college.
- (g) The members and employees of the Wisconsin Housing and Economic Development Authority, except clerical employees.
- (h) A municipal judge.
- (i) A member or the executive director of the judicial commission.
- (j) A division administrator of an office created under ch. 14 or a department or independent agency created or continued under ch. 15.
- (k) The executive director, executive assistant to the executive director, internal auditor, chief investment officer, chief financial officer, chief legal counsel, chief risk officer and investment directors of the investment board.
- (L) The members and employees of the World Dairy Center Authority.

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(m) The chief executive officer and members of the board of directors of the University of Wisconsin Hospitals and Clinics Authority.

(n) The chief executive officer and members of the board of directors of the Fox River Navigational System Authority.

(o) The executive director and members of the board of directors of the Wisconsin Quality Home Care Authority.

(om) The members of the board of directors of the Wisconsin Economic Development Corporation employed in the private sector who are appointed by the speaker of the assembly and the senate majority leader.

(14) “State public official” means any individual holding a state public office.

History: 1973 c. 90; Stats. 1973 s. 11.02; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.42; 1977 c. 29, 223, 277; 1977 c. 447 ss. 35, 209; 1979 c. 34, 177, 221; 1981 c. 20, 269, 349, 391; 1983 a. 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 166 ss. 1 to 4, 16; 1983 a. 484, 538; 1985 a. 26; 1985 a. 29 s. 3202 (46); 1985 a. 304; 1987 a. 72, 119; 1987 a. 312 s. 17; 1987 a. 340, 365, 399, 403; 1989 a. 31, 338; 1991 a. 39, 189, 221, 269; 1993 a. 16, 263, 399; 1995 a. 27, 56, 274; 1997 a. 27; 1997 a. 237 ss. 19m, 722q; 1997 a. 298; 1999 a. 42, 65; 2001 a. 16, 104, 109; 2003 a. 39; 2005 a. 335; 2007 a. 1, 20, 196; 2009 a. 28; 2011 a. 7.

Cross-reference: See also s. GAB 16.02, Wis. adm. code.

Law Revision Committee Note, 1983: This bill establishes consistency in the usage of the terms “person”, “individual” and “organization” in the code of ethics for state public officials. The term “person” is the broadest of these terms, and refers to any legal entity. The use of the term “person” in the bill is consistent with the definition of the word in s. 990.01 (26), stats., which provides that “person” includes all partnerships, associations and bodies politic or corporate”. The term “organization” is narrower, and is defined in s. 19.42 (11), stats., as “any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic”. “Individual”, although not specifically defined in the current statutes or in this bill, is used consistently in this bill to refer to natural persons.

The term “income” is used several times in the code of ethics for state public officials. This bill clarifies the current definition of income by providing a specific cross-reference to the internal revenue code and by providing that the definition refers to the most recent version of the internal revenue code which has been adopted by the legislature for state income tax purposes.

When person holds 2 government positions, one included in and the other exempted from the definition of state public official, the applicability of subch. III depends upon the capacity in which the person acted. 64 Atty. Gen. 143.

19.43 Financial disclosure. (1) Each individual who in January of any year is an official required to file shall file with the board no later than April 30 of that year a statement of economic interests meeting each of the requirements of s. 19.44 (1). The information contained on the statement shall be current as of December 31 of the preceding year.

(2) An official required to file shall file with the board a statement of economic interests meeting each of the requirements of s. 19.44 (1) no later than 21 days following the date he or she assumes office if the official has not previously filed a statement of economic interests with the board during that year. The information on the statement shall be current as per the date he or she assumes office.

(3) A nominee shall file with the board a statement of economic interests meeting each of the requirements of s. 19.44 (1) within 21 days of being nominated unless the nominee has previously filed a statement of economic interests with the board during that year. The information on the statement shall be current as per the date he or she was nominated. Following the receipt of a nominee’s statement of economic interests, the board shall forward copies of such statement to the members of the committee of the senate to which the nomination is referred.

(4) A candidate for state public office shall file with the board a statement of economic interests meeting each of the requirements of s. 19.44 (1) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers for the office which the candidate seeks, or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers or a declaration of candidacy under s. 8.05 (1) (j), 8.10 (2) (a), 8.15 (1), or 8.20 (8) (a), no later than 4:30 p.m. on the 5th day after notification of nomination is mailed or personally delivered to the candidate by the municipal clerk in the case of a candidate who is nominated at a caucus, or no later than 4:30 p.m. on the 3rd day after notification of nomination

is mailed or personally delivered to the candidate by the appropriate official or agency in the case of a write-in candidate or candidate who is appointed to fill a vacancy in nomination under s. 8.35 (2) (a). The information contained on the statement shall be current as of December 31 of the year preceding the filing deadline. Before certifying the name of any candidate for state public office under s. 7.08 (2) (a), the government accountability board, municipal clerk, or board of election commissioners shall ascertain whether that candidate has complied with this subsection. If not, the government accountability board, municipal clerk, or board of election commissioners may not certify the candidate’s name for ballot placement.

(5) Each member of the investment board and each employee of the investment board who is a state public official shall complete and file with the government accountability board a quarterly report of economic transactions no later than the last day of the month following the end of each calendar quarter during any portion of which he or she was a member or employee of the investment board. Such reports of economic transactions shall be in the form prescribed by the government accountability board and shall identify the date and nature of any purchase, sale, put, call, option, lease, or creation, dissolution, or modification of any economic interest made during the quarter for which the report is filed and disclosure of which would be required by s. 19.44 if a statement of economic interests were being filed.

(7) If an official required to file fails to make a timely filing, the board shall promptly provide notice of the delinquency to the secretary of administration, and to the chief executive of the department of which the official’s office or position is a part, or, in the case of a district attorney, to the chief executive of that department and to the county clerk of each county served by the district attorney or in the case of a municipal judge to the clerk of the municipality of which the official’s office is a part, or in the case of a justice, court of appeals judge, or circuit judge, to the director of state courts. Upon such notification both the secretary of administration and the department, municipality, or director shall withhold all payments for compensation, reimbursement of expenses, and other obligations to the official until the board notifies the officers to whom notice of the delinquency was provided that the official has complied with this section.

(8) On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may extend the time for filing or waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on that individual or that the extension of the time for filing or waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the extension or waiver.

History: 1973 c. 90; Stats. 1973 s. 11.03; 1973 c. 333; 1973 c. 334 s. 33; Stats. 1973 s. 19.43; 1977 c. 223, 277; 1979 c. 221; 1983 a. 166 ss. 5, 16; 1983 a. 484, 538; 1985 a. 29, 304; 1987 a. 399; 1989 a. 31; 1993 a. 266; 2003 a. 33; 2007 a. 1.

Cross-reference: See also chs. GAB 15 and 25, Wis. adm. code.

The extent of confidentiality of investment board nominees’ statements of economic interests rests in the sound discretion of the senate committee to which the nomination is referred under sub. (3). 68 Atty. Gen. 378.

The possible conflict between requirements of financial disclosure and confidentiality requirements for lawyers is discussed. 68 Atty. Gen. 411.

Sub. (8) does not authorize the ethics board to extend the date by which a candidate must file a statement of economic interest and cannot waive the filing requirement. 81 Atty. Gen. 85.

19.44 Form of statement. (1) Every statement of economic interests which is required to be filed under this subchapter shall be in the form prescribed by the board, and shall contain the following information:

(a) The identity of every organization with which the individual required to file is associated and the nature of his or her association with the organization, except that no identification need be made of:

1. Any organization which is described in section 170 (c) of the internal revenue code.

2. Any organization which is organized and operated primarily to influence voting at an election including support for or opposition to an individual's present or future candidacy or to a present or future referendum.

3. Any nonprofit organization which is formed exclusively for social purposes and any nonprofit community service organization.

4. A trust.

(b) The identity of every organization or body politic in which the individual who is required to file or that individual's immediate family, severally or in the aggregate, owns, directly or indirectly, securities having a value of \$5,000 or more, the identity of such securities and their approximate value, except that no identification need be made of a security or issuer of a security when it is issued by any organization not doing business in this state or by any government or instrumentality or agency thereof, or an authority or public corporation created and regulated by an act of such government, other than the state of Wisconsin, its instrumentalities, agencies and political subdivisions, or authorities or public corporations created and regulated by an act of the legislature.

(c) The name of any creditor to whom the individual who is required to file or such individual's immediate family, severally or in the aggregate, owes \$5,000 or more and the approximate amount owed.

(d) The real property located in this state in which the individual who is required to file or such individual's immediate family holds an interest, other than the principal residence of the individual or his or her immediate family, and the nature of the interest held. An individual's interest in real property does not include a proportional share of interests in real property if the individual's proportional share is less than 10% of the outstanding shares or is less than an equity value of \$5,000.

(e) The identity of each payer from which the individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged, then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62. In addition, no identification need be made of payers from which only dividends or interest, anything of pecuniary value reported under s. 19.56 or reportable under s. 19.57, or political contributions reported under ch. 11 were received.

(f) If the individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year from a partnership, limited liability company, corporation electing to be taxed as a partnership under subchapter S of the internal revenue code or service corporation under ss. 180.1901 to 180.1921 in which the individual or a member of his or her immediate family, severally or in the aggregate, has a 10% or greater interest, the identity of each payer from which the organization received \$1,000 or more of its income for its preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62. In addition, no identification need be made of payers from which dividends or interest are received.

(g) The identity of each person from which the individual who is required to file received, directly or indirectly, any gift or gifts having an aggregate value of more than \$50 within the taxable year preceding the time of filing, except that the source of a gift need not be identified if the donation is permitted under s. 19.56 (3) (e), (em) or (f) or if the donor is the donee's parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandpar-

ent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, spouse, fiancé or fiancée.

(h) Lodging, transportation, money or other things of pecuniary value reportable under s. 19.56 (2).

(2) Whenever a dollar amount is required to be reported pursuant to this section, it is sufficient to report whether the amount is not more than \$50,000, or more than \$50,000.

(3) (a) An individual is the owner of a trust and the trust's assets and obligations if he or she is the creator of the trust and has the power to revoke the trust without obtaining the consent of all of the beneficiaries of the trust.

(b) An individual who is eligible to receive income or other beneficial use of the principal of a trust is the owner of a proportional share of the principal in the proportion that the individual's beneficial interest in the trust bears to the total beneficial interests vested in all beneficiaries of the trust. A vested beneficial interest in a trust includes a vested reverter interest.

(4) Information which is required by this section shall be provided on the basis of the best knowledge, information and belief of the individual filing the statement.

History: 1973 c. 90; Stats. 1973 s. 11.04; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.44; 1977 c. 277; 1979 c. 110 s. 60 (4), (11); 1983 a. 61; 1983 a. 166 ss. 6, 16; 1983 a. 538; 1989 a. 303, 338; 1991 a. 39; 1993 a. 112, 490; 1995 a. 27.

Cross-reference: See also chs. GAB 15 and 25, Wis. adm. code.

Law Revision Committee Note, 1983: Under the ethics code, each state public official and candidate for state public office must file a statement of economic interests with the ethics board listing the businesses, organizations and other legal entities from which they and their families received substantial income during the preceding taxable year. However, the ethics code does not require identification of individual persons from whom the income is received. This bill provides that if the individual filing the statement of economic interests identifies the general nature of the business in which the individual or a member of his or her family is engaged, then no identification need be made of the estate of any deceased individual from which income was received. This bill makes it unnecessary to identify a decedent's estate which was indebted to a state public official or candidate for state public office, and makes it unnecessary to identify decedents' estates which are represented by lawyer-public officials.

A beneficiary of a future interest in a trust must identify the securities held by the trust if the individual's interest in the securities is valued at \$5,000 or more. 80 Atty. Gen. 183.

19.45 Standards of conduct; state public officials.

(1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or

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accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56 (3).

(4) No state public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

(5) No state public official may use or attempt to use the public position held by the public official to influence or gain unlawful benefits, advantages or privileges personally or for others.

(6) No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from state funds, unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced within 3 years of the date on which the board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13.

(7) (a) No state public official who is identified in s. 20.923 may represent a person for compensation before a department or any employee thereof, except:

1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or
2. At an open hearing at which a stenographic or other record is maintained; or
3. In a matter that involves only ministerial action by the department; or
4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter.

(b) This subsection does not apply to representation by a state public official acting in his or her official capacity.

(8) Except in the case where the state public office formerly held was that of legislator, legislative employee under s. 20.923 (6) (bp), (f), (g) or (h), chief clerk of a house of the legislature, sergeant at arms of a house of the legislature or a permanent employee occupying the position of auditor for the legislative audit bureau:

(a) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the department with which he or she was associated as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(b) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or

negotiate with, any officer or employee of a department in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former official's responsibility as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(c) No former state public official may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official.

(9) The attorney general may not engage in the private practice of law during the period in which he or she holds that office. No justice of the supreme court and no judge of any court of record may engage in the private practice of law during the period in which he or she holds that office. No full-time district attorney may engage in the private practice of law during the period in which he or she holds that office, except as authorized in s. 978.06 (5).

(10) This section does not prohibit a legislator from making inquiries for information on behalf of a person or from representing a person before a department if he or she receives no compensation therefor beyond the salary and other compensation or reimbursement to which the legislator is entitled by law, except as authorized under sub. (7).

(11) The legislature recognizes that all state public officials and employees and all employees of the University of Wisconsin Hospitals and Clinics Authority should be guided by a code of ethics and thus:

(a) The administrator of the division of merit recruitment and selection in the office of state employment relations shall, with the board's advice, promulgate rules to implement a code of ethics for classified and unclassified state employees except state public officials subject to this subchapter, unclassified personnel in the University of Wisconsin System and officers and employees of the judicial branch.

(b) The board of regents of the University of Wisconsin System shall establish a code of ethics for unclassified personnel in that system who are not subject to this subchapter.

(c) The supreme court shall promulgate a code of judicial ethics for officers and employees of the judiciary and candidates for judicial office which shall include financial disclosure requirements. All justices and judges shall, in addition to complying with this subchapter, adhere to the code of judicial ethics.

(d) The board of directors of the University of Wisconsin Hospitals and Clinics Authority shall establish a code of ethics for employees of the authority who are not state public officials.

(12) No agency, as defined in s. 16.52 (7), or officer or employee thereof may present any request, or knowingly utilize any interests outside the agency to present any request, to either house of the legislature or any member or committee thereof, for appropriations which exceed the amount requested by the agency in the agency's most recent request submitted under s. 16.42.

(13) No state public official or candidate for state public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any person who is subject to a registration requirement under s. 11.05, or any person making a communication that contains a reference to a clearly identified state public official holding an elective office or to a candidate for state public office.

History: 1973 c. 90; Stats. 1973 s. 11.05; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.45; 1977 c. 29; 1977 c. 196 s. 130 (2); 1977 c. 223, 277; 1977 c. 418 s. 923 (14);

1977 c. 419, 447; 1979 c. 120; 1983 a. 27 ss. 112, 2200 (15); 1983 a. 166 ss. 7, 16; 1985 a. 332 s. 251 (1); 1987 a. 365; 1989 a. 31, 338; 1991 a. 39, 316; 1995 a. 27; 1997 a. 27; 2001 a. 109; 2003 a. 33 ss. 279, 9160; 2003 a. 39; 2007 a. 1.

Cross-reference: See also ch. ER–MRS 24, Wis. adm. code.

A county board may provide for a penalty in the nature of a forfeiture for a violation of a code of ethics ordinance but may not bar violators from running for office. A violation is not a neglect of duties under s. 59.10 [now 59.15] or an *ipso facto* cause for removal under s. 17.09 (1). 66 Atty. Gen. 148. See also 67 Atty. Gen. 164.

The ethics law does not prohibit a state public official from purchasing items and services that are available to the official because he or she holds public office. If the opportunity to purchase the item or service itself has substantial value, the purchase of the item or service is prohibited. 80 Atty. Gen. 201.

Sub. (12) is an unconstitutional infringement on free speech. *Barnett v. State Ethics Board*, 817 F. Supp. 67 (1993).

19.451 Discounts at certain stadiums. No person serving in a national, state or local office, as defined in s. 5.02, may accept any discount on the price of admission or parking charged to members of the general public, including any discount on the use of a sky box or private luxury box, at a stadium that is exempt from general property taxes under s. 70.11 (36).

History: 1991 a. 37.

19.46 Conflict of interest prohibited; exception.

(1) Except in accordance with the board's advice under s. 5.05 (6a) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(3) This section does not prohibit a state public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a state public official from taking official action with respect to any proposal to modify state law or the state administrative code.

History: 1973 c. 90; Stats. 1973 s. 11.06; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.46; 1975 c. 422; 1977 c. 223, 277, 449; 1983 a. 166; 1985 a. 29; 1989 a. 338; 2007 a. 1.

19.47 Statements of economic interests. All members and employees of the board shall file statements of economic interests with the board.

History: 1973 c. 90; Stats. 1973 s. 11.07; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.47; 1975 c. 426 s. 3; 1977 c. 26, 277; 1983 a. 27, 166, 378; 1987 a. 186; 1989 a. 338; 1991 a. 39, 189; 2007 a. 1.

19.48 Duties of the board. The board shall:

(1) Promulgate rules necessary to carry out this subchapter and subch. III of ch. 13. The board shall give prompt notice of the contents of its rules to state public officials who will be affected thereby.

(2) Prescribe and make available forms for use under this subchapter and subch. III of ch. 13, including the forms specified in s. 13.685 (1).

(3) Accept and file any information related to the purposes of this subchapter or subch. III of ch. 13 which is voluntarily supplied by any person in addition to the information required by this subchapter.

(4) Preserve the statements of economic interests filed with it for a period of 6 years from the date of receipt in such form, including microfilming, optical imaging or electronic formatting, as will facilitate document retention, except that:

(a) Upon the expiration of 3 years after an individual ceases to be a state public official the board shall, unless the former state public official otherwise requests, destroy any statement of economic interests filed by him or her and any copies thereof in its possession.

(b) Upon the expiration of 3 years after any election at which a candidate for state public office was not elected, the board shall destroy any statements of economic interests filed by him or her as a candidate for state public office and any copies thereof in the board's possession, unless the individual continues to hold another position for which he or she is required to file a statement, or unless the individual otherwise requests.

(c) Upon the expiration of 3 years from the action of the senate upon a nomination for state public office at which the senate refused to consent to the appointment of the nominee, the board shall destroy any statements of economic interests filed by him or her as a nominee and any copies thereof in the board's possession, unless the individual continues to hold another position for which he or she is required to file a statement, or unless the nominee otherwise requests. This paragraph does not apply to any individual who is appointed to state public office under s. 17.20 (2).

(5) Except as provided in s. 19.55 (2) (c), make statements of economic interests filed with the board available for public inspection and copying during regular office hours and make copying facilities available at a charge not to exceed actual cost.

(6) Compile and maintain an index to all the statements of economic interests currently on file with the board to facilitate public access to such statements of economic interests.

(7) Prepare and publish special reports and technical studies to further the purposes of this subchapter and subch. III of ch. 13.

(8) Report the full name and address of any individual and the full name and address of any person represented by an individual seeking to copy or obtain information from a statement of economic interests in writing to the individual who filed it, as soon as possible.

(9) Administer programs to explain and interpret this subchapter and subch. III of ch. 13 for state public officials, and for elective state officials, candidates for state public office, legislative officials, agency officials, lobbyists, as defined in s. 13.62, local public officials, corporation counsels and attorneys for local governmental units. The programs shall provide advice regarding appropriate ethical and lobbying practices, with special emphasis on public interest lobbying. The board may delegate creation and implementation of any such program to a group representing the public interest. The board may charge a fee to participants in any such program.

(10) Compile and make available information filed with the board in ways designed to facilitate access to the information. The board may charge a fee to a person requesting information for compiling, disseminating or making available such information, except that the board shall not charge a fee for inspection at the board's office of any record otherwise open to public inspection under s. 19.35 (1).

(11) Maintain an Internet site on which the information required to be posted by agencies under s. 16.753 (4) can be posted and accessed. The information on the site shall be accessible directly or by linkage from a single page on the Internet.

History: 1973 c. 90; Stats. 1973 s. 11.08; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.48; 1975 c. 41; 1977 c. 223, 277; 1977 c. 447 ss. 37, 209; 1983 a. 166 ss. 10, 16; 1985 a. 164; 1989 a. 338, 359; 1991 a. 39, 269; 1995 a. 27; 1997 a. 186; 2005 a. 410.

Cross-reference: See also GAB, Wis. adm. code.

19.55 Public inspection of records. (1) Except as provided in sub. (2) and s. 5.05 (5s), all records under this subchapter or subch. III of ch. 13 in the possession of the board are open to public inspection at all reasonable times. The board shall require an individual wishing to examine a statement of economic interests or the list of persons who inspect any statements which are in the board's possession to provide his or her full name and address, and if the individual is representing another person, the full name and address of the person which he or she represents. Such identification may be provided in writing or in person. The board shall record and retain for at least 3 years information obtained by it pursuant to this subsection. No individual may use a fictitious

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name or address or fail to identify a principal in making any request for inspection.

(2) The following records in the board's possession are not open for public inspection:

(c) Statements of economic interests and reports of economic transactions which are filed with the government accountability board by members or employees of the investment board, except that the government accountability board shall refer statements and reports filed by such individuals to the legislative audit bureau for its review, and except that a statement of economic interests filed by a member or employee of the investment board who is also an official required to file shall be open to public inspection.

(d) Records of the social security number of any individual who files an application for licensure as a lobbyist under s. 13.63 or who registers as a principal under s. 13.64, except to the department of children and families for purposes of administration of s. 49.22 or to the department of revenue for purposes of administration of s. 73.0301.

History: 1977 c. 277; 1981 c. 335 s. 26; 1983 a. 166 ss. 15, 16; 1985 a. 164; 1989 a. 31, 338; 1997 a. 191, 237; 1999 a. 32; 2007 a. 1, 20.

The extent of confidentiality of investment board nominees' statements of economic interests rests in the sound discretion of the senate committee to which the nomination is referred. 68 Atty. Gen. 378.

19.56 Honorariums, fees and expenses. (1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

(2) (a) Except as provided in par. (b), every official required to file who receives for a published work or for the presentation of a talk or participation in a meeting, any lodging, transportation, money or other thing with a combined pecuniary value exceeding \$50 excluding the value of food or beverage offered coincidentally with a talk or meeting shall, on his or her statement of economic interests, report the identity of every person from whom the official receives such lodging, transportation, money or other thing during his or her preceding taxable year, the circumstances under which it was received and the approximate value thereof.

(b) An official need not report on his or her statement of economic interests under par. (a) information pertaining to any lodging, transportation, money or other thing of pecuniary value which:

1. The official returns to the payor within 30 days of receipt;
2. Is paid to the official by a person identified on the official's statement of economic interests under s. 19.44 (1) (e) or (f) as a source of income;
3. The official can show by clear and convincing evidence was unrelated to and did not arise from the recipient's holding or having held a public office and was made for a purpose unrelated to the purposes specified in sub. (1);
4. The official has previously reported to the board as a matter of public record;
5. Is paid by the department or municipality of which the official's state public office is a part, or, in the case of a district attorney, is paid by that department or a county which the district attorney serves, or, in the case of a justice or judge of a court of record, is paid from the appropriations for operation of the state court system; or
6. Is made available to the official by the department of commerce or the department of tourism in accordance with sub. (3) (e), (em) or (f).

(3) Notwithstanding s. 19.45:

(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is

paid or arranged by the organizer of the event or the publisher of the work.

(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

(e) A state public official who is an officer or employee of the department of commerce may solicit, receive and retain on behalf of the state anything of value for the purpose of any of the following:

1. The sponsorship by the department of commerce of a trip to a foreign country primarily to promote trade between that country and this state that the department of commerce can demonstrate through clear and convincing evidence is primarily for the benefit of this state.

2. Hosting individuals in order to promote business, economic development, tourism or conferences sponsored by multi-state, national or international associations of governments or governmental officials.

(em) A state public official who is an officer or employee of the department of tourism may solicit, receive and retain on behalf of the state anything of value for the purpose of hosting individuals in order to promote tourism.

(f) A state public official may receive and retain from the department of commerce anything of value which the department of commerce is authorized to provide under par. (e) and may receive and retain from the department of tourism anything of value which the department of tourism is authorized to provide under par. (em).

(4) If a state public official receives a payment not authorized by this subchapter, in cash or otherwise, for a published work or a talk or meeting, the official may not retain it. If practicable, the official shall deposit it with the department or municipality with which he or she is associated or, in the case of a justice or judge of a court of record, with the director of state courts. If that is not practicable, the official shall return it or its equivalent to the payor or convey it to the state or to a charitable organization other than one with which he or she is associated.

History: 1977 c. 277; 1983 a. 61, 538; 1985 a. 203; 1989 a. 31, 338; 1991 a. 39; 1995 a. 27 ss. 455 to 457, 9116 (5).

The interaction of s. 19.56 with the prohibition against furnishing anything of pecuniary value to state officials under s. 13.625 is discussed. 80 Atty. Gen. 205.

19.57 Conferences, visits and economic development activities. The department of commerce shall file a report with the board no later than April 30 annually, specifying the source and amount of anything of value received by the department of commerce during the preceding calendar year for a purpose specified in s. 19.56 (3) (e), and the program or activity in connection with which the thing is received, together with the location and date of that program or activity.

History: 1991 a. 39; 1995 a. 27 s. 9116 (5).

19.575 Tourism activities. The department of tourism shall file a report with the board no later than April 30 annually, specifying the source and amount of anything of value received by the department of tourism during the preceding calendar year for a purpose specified in s. 19.56 (3) (em) and the program or activity in connection with which the thing is received, together with the location and date of that program or activity.

History: 1995 a. 27.

19.579 Civil penalties. (1) Except as provided in sub. (2), any person who violates this subchapter may be required to forfeit not more than \$500 for each violation of s. 19.43, 19.44, or 19.56 (2) or not more than \$5,000 for each violation of any other provision of this subchapter. If the court determines that the accused has realized economic gain as a result of the violation, the court may, in addition, order the accused to forfeit the amount gained as a result of the violation. In addition, if the court determines that a state public official has violated s. 19.45 (13), the court may order the official to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained. If the court determines that a state public official has violated s. 19.45 (13) and no political contribution, service or other thing of value was obtained, the court may order the official to forfeit an amount equal to the maximum contribution authorized under s. 11.26 (1) for the office held or sought by the official, whichever amount is greater. The attorney general, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section which is not paid by the person against whom it is assessed.

(2) Any person who violates s. 19.45 (13) may be required to forfeit not more than \$5,000.

History: 2003 a. 39; 2007 a. 1 ss. 121, 130, 131.

19.58 Criminal penalties. (1) (a) Any person who intentionally violates any provision of this subchapter except s. 19.45 (13) or 19.59 (1) (br), or a code of ethics adopted or established under s. 19.45 (11) (a) or (b), shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

(b) Any person who intentionally violates s. 19.45 (13) or 19.59 (1) (br) is guilty of a Class I felony.

(2) The penalties under sub. (1) do not limit the power of either house of the legislature to discipline its own members or to impeach a public official, or limit the power of a department to discipline its state public officials or employees.

(3) In this section “intentionally” has the meaning given under s. 939.23.

History: 1973 c. 90; Stats. 1973 s. 11.10; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.50; 1975 c. 200; 1977 c. 277 ss. 34, 37; Stats. 1977 s. 19.58; 2003 a. 39.

19.59 Codes of ethics for local government officials, employees and candidates. (1) (a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the

part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

(br) No local public official or candidate for local public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any person who is subject to a registration requirement under s. 11.05, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office.

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

(f) Paragraphs (a) to (c) do not apply to the members of a local committee appointed under s. 289.33 (7) (a) to negotiate with the owner or operator of, or applicant for a license to operate, a solid waste disposal or hazardous waste facility under s. 289.33, with respect to any matter contained or proposed to be contained in a written agreement between a municipality and the owner, operator or applicant or in an arbitration award or proposed award that is applicable to those parties.

(g) 1. In this paragraph:

a. “District” means a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229.

b. “District board member” means a member of the district board of a district.

2. No district board member may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with this paragraph.

3. A district board member may receive and retain reimbursement or payment of actual and reasonable expenses for a published work or for the presentation of a talk or participation in a meeting related to processes, proposals and issues affecting a district if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

4. A district board member may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the member's use of the time, facilities, services or supplies of the district not generally available to all residents of the district and the member can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in subd. 3.

5. A district board member may receive and retain from the district or on behalf of the district transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the member can show by clear and convincing evidence were incurred or received

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on behalf of the district and primarily for the benefit of the district and not primarily for the private benefit of the member or any other person.

6. No district board member may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

7. No district board member may use or attempt to use the position held by the member to influence or gain unlawful benefits, advantages or privileges personally or for others.

8. No district board member, member of a district board member's immediate family, nor any organization with which the district board member or a member of the district board member's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from district funds unless the district board member has first made written disclosure of the nature and extent of such relationship or interest to the government accountability board and to the district. Any contract or lease entered into in violation of this subdivision may be voided by the district in an action commenced within 3 years of the date on which the government accountability board, or the district, knew or should have known that a violation of this subdivision had occurred. This subdivision does not affect the application of s. 946.13.

9. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the district with which he or she was associated as a district board member within 12 months prior to the date on which he or she ceased to be a district board member.

10. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former member's responsibility as a district board member within 12 months prior to the date on which he or she ceased to be a member.

11. No former district board member may, for compensation, act on behalf of any party other than the district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former member participated personally and substantially as a district board member.

(1m) In addition to the requirements of sub. (1), any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.

(2) An ordinance enacted under this section shall specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies.

(3) An ordinance enacted under this section may contain any of the following provisions:

(a) A requirement for local public officials, other employees of the county or municipality and candidates for local public office to identify any of the economic interests specified in s. 19.44.

(b) A provision directing the county or municipal clerk or board of election commissioners to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(c) A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any local public official or other employee of the county or municipality who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(d) A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance. A board created under this paragraph may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.

(e) Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of local public officials and other employees of the county or municipality or on the part of former local public officials or former employees of the county or municipality.

(f) A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding \$1,000 for each offense. A minimum forfeiture not exceeding \$100 for each offense may also be prescribed.

(4) This section may not be construed to limit the authority of a county, city, village or town to regulate the conduct of its officials and employees to the extent that it has authority to regulate that conduct under the constitution or other laws.

(5) (a) Any individual, either personally or on behalf of an organization or governmental body, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit, an advisory opinion regarding the propriety of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The county or municipal ethics board or the county corporation counsel or attorney shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. It is prima facie evidence of intent to comply with this section or any ordinance enacted under this section when a person refers a matter to a county or municipal ethics board or a county corporation counsel or attorney for a local governmental unit and abides by the advisory opinion, if the material facts are as stated in the opinion request. A county or municipal ethics board may authorize a county corporation counsel or attorney to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. Except as provided in par. (b), neither a county corporation counsel or attorney for a local governmental unit nor a member or agent of a county or municipal ethics board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

(b) A county or municipal ethics board, county corporation counsel or attorney for a local governmental unit replying to a request for an advisory opinion may make the opinion public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested and may make public a summary of an advisory opinion issued under this subsection after making sufficient alterations in

the summary to prevent disclosing the identities of individuals involved in the opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the county or municipal ethics board, the county corporation counsel or the attorney for the local governmental unit in connection with the request for an advisory opinion.

(6) Any county corporation counsel, attorney for a local governmental unit or statewide association of local governmental units may request the board to issue an opinion concerning the interpretation of this section. The board shall review such a request and may advise the person making the request.

(7) (a) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that the accused has violated sub. (1) (br), the court may, in addition, order the accused to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained.

(b) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that a local public official has violated sub. (1) (br) and no political contribution, service or other thing of value was obtained, the court may, in addition, order the accused to forfeit an amount equal to the maximum contribution authorized under s. 11.26 (1) for the office held or sought by the official, whichever amount is greater.

(8) (a) Subsection (1) shall be enforced in the name and on behalf of the state by action of the district attorney of any county wherein a violation may occur, upon the verified complaint of any person.

(b) In addition and supplementary to the remedy provided in sub. (7), the district attorney may commence an action, separately or in conjunction with an action brought to obtain the remedy provided in sub. (7), to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(c) If the district attorney fails to commence an action to enforce sub. (1) (a), (b), or (c) to (g) within 20 days after receiving a verified complaint or if the district attorney refuses to commence such an action, the person making the complaint may petition the attorney general to act upon the complaint. The attorney general may then bring an action under par. (a) or (b), or both.

(cm) No complaint alleging a violation of sub. (1) (br) may be filed during the period beginning 120 days before a general or spring election, or during the period commencing on the date of the order of a special election under s. 8.50, and ending on the date of that election, against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

(cn) If the district attorney for the county in which a violation of sub. (1) (br) is alleged to occur receives a verified complaint alleging a violation of sub. (1) (br), the district attorney shall, within 30 days after receipt of the complaint, either commence an investigation of the allegations contained in the complaint or dismiss the complaint. If the district attorney dismisses the complaint, with or without investigation, the district attorney shall notify the complainant in writing. Upon receiving notification of the dismissal, the complainant may then file the complaint with the attorney general or the district attorney for a county that is adjacent to the county in which the violation is alleged to occur. The attorney general or district attorney may then investigate the allegations contained in the complaint and commence a prosecution.

(d) If the district attorney prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the county wherein the violation occurs. If the attorney

general prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the state.

History: 1979 c. 120; 1981 c. 149; 1981 c. 335 s. 26; 1983 a. 166 s. 16; 1991 a. 39, 269; 1995 a. 56, 227; 1999 a. 167; 2001 a. 109; 2003 a. 39; 2007 a. 1.

SUBCHAPTER IV

PERSONAL INFORMATION PRACTICES

19.62 Definitions. In this subchapter:

(1) “Authority” has the meaning specified in s. 19.32 (1).

(2) “Internet protocol address” means an identifier for a computer or device on a transmission control protocol–Internet protocol network.

(3) “Matching program” means the computerized comparison of information in one records series to information in another records series for use by an authority or a federal agency to establish or verify an individual’s eligibility for any right, privilege or benefit or to recoup payments or delinquent debts under programs of an authority or federal agency.

(5) “Personally identifiable information” means information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

(6) “Record” has the meaning specified in s. 19.32 (2).

(7) “Records series” means records that are arranged under a manual or automated filing system, or are kept together as a unit, because they relate to a particular subject, result from the same activity or have a particular form.

(8) “State authority” means an authority that is a state elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, rule or order; a state governmental or quasi–governmental corporation; the supreme court or court of appeals; or the assembly or senate.

History: 1991 a. 39; 1993 a. 215; 1995 a. 27; 1997 a. 79; 2001 a. 16; 2007 a. 20.

19.65 Rules of conduct; employee training; and security. An authority shall do all of the following:

(1) Develop rules of conduct for its employees who are involved in collecting, maintaining, using, providing access to, sharing or archiving personally identifiable information.

(2) Ensure that the persons identified in sub. (1) know their duties and responsibilities relating to protecting personal privacy, including applicable state and federal laws.

History: 1991 a. 39.

19.67 Data collection. (1) COLLECTION FROM DATA SUBJECT OR VERIFICATION. An authority that maintains personally identifiable information that may result in an adverse determination about any individual’s rights, benefits or privileges shall, to the greatest extent practicable, do at least one of the following:

(a) Collect the information directly from the individual.

(b) Verify the information, if collected from another person.

History: 1991 a. 39.

19.68 Collection of personally identifiable information from Internet users. No state authority that maintains an Internet site may use that site to obtain personally identifiable information from any person who visits that site without the consent of the person from whom the information is obtained. This section does not apply to acquisition of Internet protocol addresses.

History: 2001 a. 16.

19.69 Computer matching. (1) MATCHING SPECIFICATION. A state authority may not use or allow the use of personally identifiable information maintained by the state authority in a match under a matching program, or provide personally identifiable information for use in a match under a matching program, unless

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the state authority has specified in writing all of the following for the matching program:

- (a) The purpose and legal authority for the matching program.
- (b) The justification for the program and the anticipated results, including an estimate of any savings.
- (c) A description of the information that will be matched.

(2) COPY TO PUBLIC RECORDS BOARD. A state authority that prepares a written specification of a matching program under sub. (1) shall provide to the public records board a copy of the specification and any subsequent revision of the specification within 30 days after the state authority prepares the specification or the revision.

(3) NOTICE OF ADVERSE ACTION. (a) Except as provided under par. (b), a state authority may not take an adverse action against an individual as a result of information produced by a matching program until after the state authority has notified the individual, in writing, of the proposed action.

(b) A state authority may grant an exception to par. (a) if it finds that the information in the records series is sufficiently reliable.

(4) NONAPPLICABILITY. This section does not apply to any matching program established between the secretary of transportation and the commissioner of the federal social security administration pursuant to an agreement specified under s. 85.61 (2).

History: 1991 a. 39, 269; 1995 a. 27; 2003 a. 265.

19.71 Sale of names or addresses. An authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. The collection of fees under s. 19.35 (3) is not a sale or rental under this section.

History: 1991 a. 39.

19.77 Summary of case law and attorney general opinions. Annually, the attorney general shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The attorney general shall provide the summary, at no charge, to interested persons.

History: 1991 a. 39.

19.80 Penalties. (2) EMPLOYEE DISCIPLINE. Any person employed by an authority who violates this subchapter may be discharged or suspended without pay.

(3) PENALTIES. (a) Any person who willfully collects, discloses or maintains personally identifiable information in violation of federal or state law may be required to forfeit not more than \$500 for each violation.

(b) Any person who willfully requests or obtains personally identifiable information from an authority under false pretenses may be required to forfeit not more than \$500 for each violation.

History: 1991 a. 39, 269.

SUBCHAPTER V

OPEN MEETINGS OF GOVERNMENTAL BODIES

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426; 1983 a. 192.

NOTE: The following annotations relate to s. 66.77, repealed by Chapter 426, laws of 1975.

Subsequent to the presentation of evidence by the taxpayer, a board of review's consideration of testimony by the village assessor at an executive session was contrary to the open meeting law. Although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi-judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi-judicial hearing without the presence of or notice to the objecting taxpayer. *Dolphin v. Butler Board of Review*, 70 Wis. 2d 403, 234 N.W.2d 277 (1975).

The open meeting law is not applicable to the judicial commission. *State ex rel. Lynch v. Dancy*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting when there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is a formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of the vote must be made available for public inspection, pursuant to 19.21, absent a specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code provisions, are governmental bodies and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by worker's compensation and unemployment advisory councils that utilized adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening was contrary to the open records law. 63 Atty. Gen. 414.

A governmental body can call closed sessions for proper purposes without giving notice to members of the news media who have filed written requests. 63 Atty. Gen. 470.

The meaning of "communication" is discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

The posting in the governor's office of agenda of future investment board meetings is not sufficient communication to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

A county board may not utilize an unidentified paper ballot in voting to appoint a county highway commissioner, but may vote by ayes and nays or show of hands at an open session if some member does not require the vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

NOTE: The following annotations refer to ss. 19.81 to 19.98.

When the city of Milwaukee and a private non-profit festival organization incorporated the open meetings law into a contract, the contract allowed public enforcement of the contractual provisions concerning open meetings. *Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

Sub. (2) requires that a meeting be held in a facility that gives reasonable public access, not total access. No person may be systematically excluded or arbitrarily refused admittance. *State ex rel. Badke v. Greendale Village Bd.* 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

This subchapter is discussed. 65 Atty. Gen. preface.

Public notice requirements for meetings of a city district school board under this subchapter and s. 120.48, 1983 stats., are discussed. 66 Atty. Gen. 93.

A volunteer fire department organized as a nonprofit corporation under s. 213.05 is not subject to the open meeting law. 66 Atty. Gen. 113.

Anyone has the right to tape-record an open meeting of a governmental body provided the meeting is not thereby physically disrupted. 66 Atty. Gen. 318.

The open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

The open meeting law does not apply if the common council hears a grievance under a collective bargaining agreement. 67 Atty. Gen. 276.

The application of the open meeting law to the duties of WERC is discussed. 68 Atty. Gen. 171.

A senate committee meeting was probably held in violation of the open meetings law although there was never any intention prior to the gathering to attempt to debate any matter of policy, to reach agreement on differences, to make any decisions on any bill or part thereof, to take any votes, or to resolve substantive differences. Quorum gatherings should be presumed to be in violation of the law, due to a quorum's ability to thereafter call, compose and control by vote a formal meeting of a governmental body. 71 Atty. Gen. 63.

Nonstock corporations created by statute as bodies politic clearly fall within the term "governmental body" as defined in the open meetings law and are subject to the provisions of the open meetings law. Nonstock corporations that were not created by the legislature or by rule, but were created by private citizens are not bodies politic and not governmental bodies. 73 Atty. Gen. 53.

A "quasi-governmental corporation" in sub. (1) includes private corporations that closely resemble governmental corporations in function, effect, or status. 80 Atty. Gen. 129.

Understanding Wisconsin's open meeting law. Harvey, WBB September 1980.

Getting the Best of Both Worlds: Open Government and Economic Development. Westerberg. Wis. Law. Feb. 2009.

19.82 Definitions. As used in this subchapter:

(1) “Governmental body” means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

(2) “Meeting” means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77 (5) (k), or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

(3) “Open session” means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305; 1993 a. 215, 263, 456, 491; 1995 a. 27, 185; 1997 a. 79; 1999 a. 9; 2007 a. 20, 96; 2009 a. 28.

A “meeting” under sub. (2) was found although the governmental body was not empowered to exercise the final powers of its parent body. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

A “meeting” under sub. (2) was found when members met with a purpose to engage in government business and the number of members present was sufficient to determine the parent body’s course of action regarding the proposal discussed. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

The open meetings law is not meant to apply to single-member governmental bodies. Sub. (2) speaks of a meeting of the members, plural, implying there must be at least two members of a governmental body. *Plourde v. Berends*, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130, 05–2106.

A corporation is quasi-governmental if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status, requiring a case-by-case analysis. Here, a primary consideration was that the body was funded exclusively by public tax dollars or interest thereon. Additionally, its office was located in the municipal building, it was listed on the city Web site, the city provided it with clerical support and office supplies, all its assets revert to the city if it ceases to exist, its books are open for city inspection, the mayor and another city official are directors, and it had no clients other than the city. *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295, 06–0662.

A municipal public utility commission managing a city owned public electric utility is a governmental body under sub. (1). 65 Atty. Gen. 243.

A “private conference” under s. 118.22 (3), on nonrenewal of a teacher’s contract is a “meeting” within s. 19.82 (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under sub. (3). 67 Atty. Gen. 125.

A telephone conference call involving members of governmental body is a “meeting” that must be reasonably accessible to the public and public notice must be given. 69 Atty. Gen. 143.

19.83 Meetings of governmental bodies. (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

History: 1975 c. 426; 1997 a. 123.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a “meeting,” unless the gathering is social or by chance. *State ex rel. Badke v. Greendale Village Board*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person’s designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20.

There is no requirement in this section that the notice provided be exactly correct in every detail. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01–0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01–0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public’s right to information and the government’s need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05–2998.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250.

The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.

The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting, is a “governmental body” within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of the notices. 77 Atty. Gen. 312.

A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publication. *Martin v. Wray*, 473 F. Supp. 1131 (1979).

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19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability board under s. 5.05 (6a), or from any county or municipal ethics board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a. 27; 1997 a. 39, 237, 283; 1999 a. 32; 2007 a. 1, 20; 2009 a. 28.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the public's right of inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Board*, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

The balance between protection of reputation under sub. (1) (f) and the public interest in openness is discussed. *Wis. State Journal v. UW-Platteville*, 160 Wis. 2d 31, 465 N.W.2d 266 (Ct. App. 1990). See also *Pangman v. Stigler*, 161 Wis. 2d 828, 468 N.W.2d 784 (Ct. App. 1991).

A "case" under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of a permit. *Hodge v. Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

A closed session to discuss an employee's dismissal was properly held under sub. (1) (b) and did not require notice to the employee under sub. (1) (c) when no evidentiary hearing or final action took place in the closed session. *State ex rel. Epping v. City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998), 97-0403.

The exception under sub. (1) (e) must be strictly construed. A private entity's desire for confidentiality does not permit a closed meeting. A governing body's belief that secret meetings will produce cost savings does not justify closing the door to public scrutiny. Providing contingencies allowing for future public input was insufficient. Because legitimate concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exception under sub. (1) (e). *Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640, 06-0427.

Section 19.35 (1) (a) does not mandate that, when a meeting is closed under this section, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeier*, 2002 WI 84, 254 Wis. 2d 306. *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06-1143.

Nothing in sub. (1) (e) suggests that a reason for going into closed session must be shared by each municipality participating in an intergovernmental body. It is not inconsistent with the open meetings law for a body to move into closed session under sub. (1) (e) when the bargaining position to be protected is not shared by every member of the body. Once a vote passes to go into closed session, the reason for requesting the vote becomes the reason of the entire body. *Herro v. Village of McFarland*, 2007 WI App 172, 303 Wis. 2d 749, 737 N.W.2d 55, 06-1929.

In allowing governmental bodies to conduct closed sessions in limited circumstances, this section does not create a blanket privilege shielding closed session contents from discovery. There is no implicit or explicit confidentiality mandate. A closed meeting is not synonymous with a meeting that, by definition, entails a privilege exempting its contents from discovery. *Sands v. The Whitnall School District*, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439, 05-1026.

Boards of review cannot rely on the exemptions in sub. (1) to close any meeting in view of the explicit requirements in s. 70.47 (2m). 65 Att'y. Gen. 162.

A university subunit may discuss promotions not relating to tenure, merit increases, and property purchase recommendations in closed session. 66 Att'y. Gen. 60.

Neither sub. (1) (c) nor (f) authorizes a school board to make actual appointments of a new member in closed session. 74 Att'y. Gen. 70.

A county board chairperson and committee are not authorized by sub. (1) (c) to meet in closed session to discuss appointments to county board committees. In appropriate circumstances, sub. (1) (f) would authorize closed sessions. 76 Att'y. Gen. 276.

Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion, or performance evaluation policies to be applied to a position of employment in general. 80 Att'y. Gen. 176.

A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that deliberations leading to ratification of a tentative agreement with a bargaining unit, as well as the ratification vote, must be held in open session. 81 Att'y. Gen. 139.

"Evidentiary hearing" as used in s. 19.85 (1) (b), means a formal examination of accusations by receiving testimony or other forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered by that section. A council that considered a mayor's accusations against an employee in closed session without giving the employee prior notice violated the requirement of actual notice to the employee. *Campana v. City of Greenfield*, 38 F. Supp. 2d 1043 (1999).

Closed Session, Open Book: Sifting the *Sands* Case. *Bach*. Wis. Law. Oct. 2009.

19.851 Closed sessions by government accountability board. The government accountability board shall hold each

meeting of the board for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the ethics and accountability division of the board in closed session under this section. Prior to convening under this section, the government accountability board shall vote to convene in closed session in the manner provided in s. 19.85 (1). No business may be conducted by the government accountability board at any closed session under this section except that which relates to the purposes of the session as authorized in this section or as authorized in s. 19.85 (1).

History: 2007 a. 1.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1995 a. 27; 2007 a. 20; 2009 a. 28.

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3. shall be closed to the public.

History: 1975 c. 426; 1977 c. 418; 1987 a. 312 s. 17.

Sub. (3) applied to a closed meeting of the members of one political party on a legislative committee to discuss a bill. State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

Under sub. (1), a common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does

not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than \$25 nor more than \$300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

The state need not prove specific intent to violate the Open Meetings Law. State v. Swanson, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

(5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

History: 1975 c. 426; 1981 c. 289; 1995 a. 158.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

Awards of attorney fees are to be at a rate applicable to private attorneys. A court may review the reasonableness of the hours and hourly rate charged, including the rates for similar services in the area, and may in addition consider the peculiar facts of the case and the responsible party's ability to pay. Hodge v. Town of Turtle Lake, 190 Wis. 2d 181, 526 N.W.2d 784 (Ct. App. 1994).

Actions brought under the open meetings and open records laws are exempt from the notice provisions of s. 893.80 (1). Auchinleck v. Town of LaGrange, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94-2809.

Failure to bring an action under this section on behalf of the state is fatal and deprives the court of competency to proceed. Fabyan v. Achtenhagen, 2002 WI App 214, 257 Wis. 2d 310, 652 N.W.2d 649, 01-3298.

Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state, subject to the 2-year statute of limitations under s. 893.93 (2). Leung v. City of Lake Geneva, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104, 02-2747.

When a town board's action was voided by the court due to lack of statutory authority, an action for enforcement under sub. (4) by an individual as a private attorney general on behalf of the state against individual board members for a violation of the open meetings law that would subject the individual board members to civil forfeitures was

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not rendered moot. *Lawton v. Town of Barton*, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304, 04–0659

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.